

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 220

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., PETITIONERS,

vs.

BROTHERHOOD OF RAILWAY TRAINMEN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX

	Original	Print
Record from the United States District Court for the Middle District of Florida		
Complaint	1	1
Affidavit of Marshall C. Jennette	11	8
Affidavit of Philip J. Lee	15	11
Affidavit of W. E. Satterwhite	19	15
Temporary restraining order and notice of hearing on plaintiffs' motion for a preliminary injunction	22	18
Notice of appeal to Court of Appeals	26	21
Motion for stay	28	22
Order denying motion for stay	31	24
Motion to set time for hearing on plaintiffs' application for temporary injunction	32	25
Order setting hearing on application for temporary injunction	34	26
Order for preliminary injunction	35	27

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JULY 22, 1966

	Original	Print
Record from the United States District Court for the Middle District of Florida—Continued		
Notice of appeal to Court of Appeals	42	32
Bond on appeal	44	33
General power of attorney (omitted in printing)	45a	34
Clerk's certificate (omitted in printing)	46	34
Order on motion for a stay of preliminary injunction pending appeal	47	35
Motion to stay mandate and order denying same	48	36
Judgment	51	38
Opinion, Tuttle, C.J.	52	39
Dissenting opinion, Choate, J.	65	50
Order allowing certiorari	76	58
Additional proceedings in the United States District Court		
Report of proceedings upon application for temporary restraining order—May 4, 1966	1	59
Appearances	2	59
Testimony of L. T. Andrews—		
—direct	8	62
—cross	14	66
—redirect	22	71
Marshall C. Jennette—		
—direct	24	71
—cross	42	82
—redirect	63	95
—recross	66	96
Colloquy between Court and counsel	68	97
Motion to dismiss for lack of jurisdiction	70	98
Excerpts from argument of Mr. Rutledge	71	99
Colloquy between Court and counsel	94	101
Excerpt from argument of Mr. Towers	99	101
Excerpt from argument of Mr. Adams	107	102
Report of proceedings upon application for temporary injunction—May 9, 1966	1	103
Appearances	2	104
Colloquy between Court and counsel	5	104

BLEED THROUGH POOR COPY

	Original	Print
Additional proceedings in the United States District Court—Continued		
Report of proceedings upon application for temporary injunction—May 9, 1966—Continued		
Testimony of Marshall C. Jennette—		
—direct	8	106
—cross	10	107
—redirect	13	109
—recross	14	110
—redirect	15	110
Arthur Caleb Harrington—		
—direct	17	111
—cross	19	113
—redirect	20	113
—recross	21	114
Glenn Gene Jones—		
—direct	21	114
—cross	24	116
Alfred G. Johnson—		
—direct	25	116
—cross	28	118
—redirect	28	119
Testimony of Cecil Wilburn Batton—		
—direct	29	119
—cross	31	120
L. T. Andrews—		
—direct	34	122
—cross	48	130
—redirect	50	132
W. E. Satterwhite—		
—direct	53	134
—cross	57	136
Charles S. Barrett—		
—direct	58	137
Raymond W. Wykoff—		
—direct	62	140
—cross	68	143
Raymond C. Moore—		
—direct	68	143
—cross	75	147

COPY BOUND CLOSE IN CENTER

	Original	Print
Additional proceedings in the United States District Court—Continued		
Report of proceedings upon application for temporary injunction—May 9, 1966—Continued		
Testimony of Neil G. Jenkins—		
—direct	82	151
—cross	88	154
Colloquy between Court and counsel	89	155
Excerpt from argument of Mr. Adams	139	162
Excerpt from argument of Mr. Grissett	148	164
Exhibits:		
Plaintiffs' Exhibit No. 1—Group of photographs lettered A through R showing locations of pickets and map showing general layout of Jacksonville Terminal Co.	1	165
Plaintiffs' Exhibit No. 2—Letter dated May 3, 1966 from Rutledge and Milledge to the Honorable Judges for the Fourth Judicial Circuit in and for Duval County, Florida	20	184
Plaintiff's (Seaboard) Exhibit No. 1—List of industries located along the Jacksonville Terminal Company's tracks in Jacksonville	21	185
Plaintiff's (Seaboard) Exhibit No. 2—List of industries located north and east of the Jacksonville Terminal Company property, served by the Seaboard Railroad	22	186
Plaintiff's (Seaboard) Exhibit No. 3—Affidavit of P. D. Orleman	25	190
Plaintiff's (Seaboard) Exhibit No. 4—Affidavit of Fred M. Kimbrough	28	192
Defendants' Exhibit "A"—Excerpts from transcript of record in case No. 63-16, Florida East Coast v. Jacksonville Terminal Company in the United States District Court for the Middle District of Florida	A	194
Docket entries	B	194
Complaint	1	198
Exhibit "A"—Operating and Guaranty Agreement	11	208

	Original	Print
Additional proceedings in the United States District Court—Continued		
Exhibits—Continued		
Defendants' Exhibit "A"—Excerpts from transcript of record in case No. 63-16, Florida East Coast v. Jacksonville Terminal Company in the United States District Court for the Middle District of Florida—Continued		
Order for preliminary injunction	48	245
Agreement and stipulation for dismissal of interlocutory appeal	67	254
Motion to dismiss and answer of defendants, Atlantic Coast Line Railroad Company and Seaboard Air Line Railroad Company	73	258
Motion to dismiss and answer of defendant, Jacksonville Terminal Company	79	265
Stipulation filed September 4, 1963	182	269
Order filed September 4, 1963	184	272
Petition for intervention filed August 20, 1965	186	274
Motion to dissolve or modify or clarify order for preliminary injunction filed August 20, 1965	193	280
Order filed September 21, 1965, denying petition for intervention	225	284
Excerpt from transcript of proceedings upon application for injunctive and other relief held January 28-29, 1963	1	285
Excerpt from argument of Mr. Adams	284	285

fol. 1]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 66-357-Civ-J

TLANTIC COAST LINE RAILROAD COMPANY, a corporation, JACKSONVILLE TERMINAL COMPANY, a corporation, and SEABOARD AIR LINE RAILROAD COMPANY, a corporation, Plaintiffs,

vs.

ROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership and Ray Moore and Lowell Kennedy, individually and as officials of said brotherhood; and the members of said organization;

RDER OF RAILWAY CONDUCTORS AND BRAKEMEN, an unincorporated association in its own right and as representative of its membership and T. C. Boland, individually and as an official of said brotherhood; and the members of said organization;

ROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association in its own right and as representative of its membership and J. E. Eason, individually and as an official of said brotherhood; and the members of said organization, Defendants.

COMPLAINT—Filed May 4, 1966

1. This Court has jurisdiction of this suit because this an action arising under the Constitution and laws of the fol. 2] United States regulating interstate commerce, and

[File endorsement omitted]

the amount in controversy exceeds the sum of $10,000.00, exclusive of interest and costs. The jurisdiction of this Court is specifically invoked under Sections 1331 and 1337 of the Judicial Code (28 U.S.C. Sections 1331 and 1337), the Interstate Commerce Act (49 U.S.C. Section 1, et seq.) and Rule 23(a) of the Federal Rules of Civil Procedure.

2. Plaintiff Atlantic Coast Line Railroad Company (hereinafter called "Coast Line") is a corporation organized under the laws of the State of Virginia and is authorized to do business in the State of Florida. Plaintiff Seaboard Air Line Railroad Company (hereinafter called "Seaboard") is a corporation organized under the laws of the State of Virginia and is authorized to do business in the State of Florida. Jacksonville Terminal Company (hereinafter called Terminal Company) is a railroad corporation organized and existing under the laws of the State of Florida and operates and maintains a railroad terminal, yards and passenger station in the City of Jacksonville, Duval County, Florida, and, as a common carrier, is likewise subject to the Interstate Commerce Act. Plaintiffs, Coast Line and Seaboard, hold themselves out, and are required by law, to provide common carrier transportation service to the public in accordance with their respective tariffs, schedules, etc., on file with the Interstate Commerce Commission and the Florida Public Utilities Commission. Said Plaintiffs collectively operate in many states and together with other railroads provide regular and extensive service between points in Florida and the rest of the United States and adjacent foreign countries and handle extensive freight, passengers, mail and express traffic between many points requiring joint service to and from the State of Florida over the facilities of the Jacksonville Terminal Company, a Florida corporation.

3. Plaintiffs, Coast Line and Seaboard, as common carriers, serve various communities, industries, and plants by [fol. 3] furnishing to said communities, industries and plants the supplies and materials vital for their existence

rough freight, including perishables, passenger and mail
vice. Plaintiff Terminal Companies' facility is operated
order to effect and is essential to the physical inter-
ange of railroad business between the *Atlantic Coast*
e Railroad Company, Seaboard Air Line Railroad Com-
y and various other railroads, who, collectively, operate
many states, and together with other railroads provide
ular and extensive service between points in Florida
the rest of the United States, and handle extensive
ight, passenger, mail and express traffic between many
nts requiring joint service through the State of Florida
way of the plaintiff Terminal Company. Said operation
he Terminal Company facility is governed by an Operat-
and Guaranty Agreement by and between the foregoing
various other railroads which was approved and au-
rized by the Interstate Commerce Commission on or
ut November 19, 1947. Plaintiffs allege that the inter-
tion of their operation will be in violation of their con-
utional and property rights. Plaintiffs will be unable
handle the daily shipments of U. S. mail, baggage, ex-
ss, fruits, fresh vegetables, citrus fruits and other food
other articles of commerce, as well as passenger ser-
. Such interruption will create irreparable damage not
to plaintiffs but to the United States Government and
ntless businesses, industries, individuals and said operat-
railroads. The interruption of plaintiffs' facilities and
rations will be contrary to the purpose and require-
nts of The Interstate Commerce Act, 49 USC Sections
) and 1(11), and comparable provisions of the Florida
tutes and will prevent plaintiffs from fulfilling their
mon carrier obligations to the public. The failure to
vide common carrier services required by law by sub-
plaintiffs to damages, fines and penalties.

.4] 4. Defendants are unincorporated labor organiza-
s and other defendants are either members of said
r organizations holding the offices captioned above or
viduals participating in concert with said organizations
he unlawful acts hereinafter set forth. The members

of the above captioned labor organizations are so numerous as to make it impracticable to bring them all before the Court.

5. The defendants are employed or were formerly employed by the Florida East Coast Railway Company and are engaging in a dispute with the Florida East Coast Railway Company. Neither plaintiff nor any of its employees are involved in said dispute. The defendant brotherhoods are on strike against the Florida East Coast Railway Company, and in the course of said strike are picketing against said railroad at various locations in the State of Florida.

6. On May 4, 1966, at or about 3:00 A.M., the defendant brotherhoods, their officers, agents, representatives and members and others herein named defendants commenced picketing the premises of the plaintiff, Jacksonville Terminal Company, at places other than the entrance designated for entrance for Florida East Coast Railway employees only, and that as a result thereof plaintiff's employees, who are not in any way involved in said dispute, have been induced thereby to refuse and have refused to report for duty as employees of plaintiff and have refused to perform services for plaintiff. Said defendants have also commenced picketing at various places which are under the sole control and operation of the Coast Line and Seaboard. There is no justification for the defendant to picket at any other place than those designated for the entrance of Florida East Coast Railway employees only, as the said Florida East Coast Railway Company has substantial facilities in St. Augustine, Florida, as well as throughout the State of Florida, and the defendants can convey their message to [fol. 5] the proper interested persons without disturbing operations of plaintiff's railroad terminal yard and passenger station.

7. The unlawful work stoppage, slowdown and interruption of the plaintiff railroads resulting from the acts of defendants as above alleged unless restrained or enjoined

by this Court, will interfere with the movement of passengers, mail, freight and express lading, including products of industry and food and other lading essential to the public health and safety in interstate and intrastate over the Coast Line and Seaboard lines and the Terminal Company connecting lines of railroad, contrary to the public interest and national welfare. If said unlawful acts continue, they will obstruct, hinder, and delay the interstate commerce over railroads and connecting lines. Such unlawful acts, if continued, will also cause irreparable damage to plaintiffs in the following particulars: substantial monetary amounts in direct wage costs, losses from using supervisory personnel to perform the aforesaid duties unlawfully refused by defendants, and revenue losses arising from plaintiffs being prevented from adequately servicing businesses and industries.

8. The Norris-LaGuardia Act (29 USC §101, *et seq.*) does not apply. There is no labor dispute here involved in this case between the plaintiffs and defendants, nor do plaintiffs and defendants stand in a relation of employer and employee. Plaintiffs are not involved in any dispute with the defendants. Any claim that the actions of the defendants constitute merely "patrolling" within the meaning of 29 USC Section 104 is a pretense or a method of involving fraud within the meaning of said statute. Defendants' purpose and plan is not simply to advise the public of their dispute with Florida East Coast Railway Company but rather to prevent effectively the use of Terminal Com-[fol. 6] panies' facility by plaintiffs and their respective employees in the pursuit of plaintiffs' respective businesses.

9. Plaintiff alleges that unless a temporary restraining order and injunction is issued as prayed herein, immediate, substantial, and irreparable injury will result in and to the property and business of plaintiff, and to the traveling and shipping public that they are required by law to serve. Plaintiffs have no plain speedy or adequate remedy at law. Plaintiff is informed and believes that the aforementioned

illegal actions of the defendants will be continued unless the relief prayed for is granted. Far greater injury will be inflicted on the plaintiff by denial of the relief sought than can result to the defendants by the granting of said relief.

[fol. 7] Wherefore, Plaintiff Prays:

1. That the Court issue a preliminary injunction made permanent on final hearing, and pending hearing and determination of plaintiff's motion for a preliminary injunction the Court issue a temporary restraining order on the grounds that immediate, irreparable injury, loss and damage will result to plaintiffs before notice can be served and a hearing had on said Motion for Preliminary Injunction, all as more fully appears from this verified complaint and the affidavits of Philip J. Lee, M. C. Jennette and W. E. Satterwhite, attached to the Motion for Preliminary Injunction filed herewith.

2. That the temporary restraining order, preliminary injunction and permanent injunction enjoin and restrain the defendants individually and as officers, agents, servants, employees, representatives, members, attorneys and all other persons acting at the direction of or in active concert or participation with them, and all persons receiving notice of any such orders of the Court from:

(a) ordering, directing, authorizing, recommending, sanctioning, starting, continuing, permitting, or participating in the patrolling, picketing or blockading of, or the interference with, the entrances or exits of any kind or description, used by the employees of the plaintiffs in connection with their work or in land, buildings, facilities or other property operated, owned or controlled by plaintiffs.

(b) causing, compelling or inducing the employees of the plaintiffs to cease performing the duties of their employment in connection with the operation of the various plaintiffs particularly with respect to the transportation of passengers or to the receiving, transportation and handling of goods of any shipper, receiver or common carrier,

8] or causing, compelling or inducing the plaintiffs, or mployees or representatives to fail to provide facilities he transportation of property belonging to any shipper, ver, or common carrier, or to fail to carry, transmit or er the United States mail, or to fail to provide trans- ation for passengers, or causing, compelling or inducing laintiff or its employees to fail to perform their obliga- as required by law;

) causing, compelling and inducing the plaintiffs, or mployees or representatives, to fail to perform any of lawful duties, including the operating of locomotives, or trains, or to interfere in any way with the delivery, ng, unloading, dispatch or movement of any of plain- rolling stock, engines, cars, equipment or trains or any e contents or any of the passengers thereof;

) interfering with employees of plaintiffs in the per- ance of their respective duties of their employment by or otherwise, or paying any benefit and giving any y or anything of value to any employee of plaintiffs refuse a lawful order to perform services for plaintiffs ccordance with any collective bargaining agreement ring said services in, on or about plaintiffs' facilities, pporting in any way any employee of plaintiffs who es to obey a lawful order or request to perform such ces.

That the Court enter a mandatory injunction requir- he defendants or any of them, until further order of Court, to withdraw and countermand any order, direc- recommendation, request or other advice, heretofore d by any of defendants' officers, agents, attorneys, or bers, asking any of plaintiffs' employees not to render ice in connection with the operation of the various tiffs.

9] 4. That, on final hearing, plaintiffs may have ages against said defendants or some of them in such nt as the Court may be to be just, as well as their in this action.

5. That the plaintiffs have such other and further relief as the Court may deem proper.

Atlantic Coast Line Railroad Company, C. D. Towers, Jr., Rogers, Towers, Bailey, Jones & Gay, Attorneys for Atlantic Coast Line Railroad Company.

Jacksonville Terminal Company, Adam G. Adams, II, McCarthy, Adams & Foote, Attorneys for Jacksonville Terminal Company.

Seaboard Air Line Railroad Company, W. E. Grissett, Cox, Grissett & Webb, Attorneys for Seaboard Air Line Railroad Company.

[fol. 10] *Duly sworn to by Marshall C. Jennette, jurat omitted in printing.*

[fol. 11]

AFFIDAVIT OF MARSHALL C. JENNETTE

Before me, an officer authorized to administer oaths and take acknowledgments, this day personally appeared Marshall C. Jennette, who being by me first duly sworn, said on oath as follows:

1. That affiant is the President and General Manager of the Jacksonville Terminal Company, a railroad corporation organized and existing under the laws of the State of Florida. By reason thereof, affiant is familiar with and has personal knowledge of the matters and things hereinafter set forth.

2. The Jacksonville Terminal Company operates and maintains a railroad terminal, yards and passenger station in the City of Jacksonville, Duval County, Florida, for the purpose of providing passenger, freight, express and mail service in northeast Florida, particularly and in general for the purpose of serving the entire State of Florida and furnishing connecting services for interstate commerce. In addition to the general public at large, the Jacksonville Terminal Company serves the United States

BLEED THROUGH POOR COPY

vernment under various mail contracts, the Atlantic
ast Line Railroad Company, the Seaboard Air Line Rail-
ıd Company, the Southern Railway Company, the Geor-
ol. 12] gia Southern and Florida Railway Company and
Florida East Coast Railway Company, which said
lroad companies collectively operate in many states,
d together with other railroads provide regular and ex-
sive service between points in Florida and the rest of
United States and handle extensive freight, passenger,
il and express traffic between many points requiring
nt service through the State of Florida by way of the
cksonville Terminal Company. The Jacksonville Ter-
nal Company's operation of its facility as aforesaid is
verned by an operating and guaranty agreement between
foregoing railroads which was approved and author-
d by the Interstate Commerce Commission on or about
vember 19, 1947.

3. In connection with its daily operations, the Jackson-
le Terminal Company handles approximately 44 pas-
ger trains; all freight interchanges between the above
ned railroads; all passenger service in and out of the
ate of Florida; the handling and processing of all mail
rail to and from the State of Florida under contracts
h the United States Government; the switching of rail-
d cars for various surrounding industries in Duval
unty, Florida, to wit: The Atlantic and Pacific Tea Com-
ny; Clark Fruit Company; Chitty Company; Atlantic
Cold Storage Company; and others; and the handling
d processing of thousands of dollars worth of express
d perishable goods.

4. On May 4, 1966, at approximately 3:00 o'clock A.M.,
rsons who identified themselves as members of the
otherhood of Railroad Trainmen began to picket and
rol the premises of Jacksonville Terminal Company,
rying placards to the effect that the Brotherhood of
lroad Trainmen is on legal strike against the Florida
st Coast Railroad Company and requesting other rail-
d men not to cross their picket lines. Attached to this
l. 13] affidavit as a part hereof and numbered Exhibits

A through R are photographs taken of said pickets which truly and accurately portray and describe the various persons picketing and patrolling as aforesaid.

5. Affiant is further informed and verily believes that the railway organizations to wit, The Order of Railway Conductors and Brakemen, the Brotherhood of Locomotive Firemen and Enginemen and their respective individual members are participating and cooperating with the organization of Brotherhood of Railroad Trainmen and its members in picketing and patrolling as aforesaid. By 6:30 A.M. March 4, 1966, the said labor organizations and their members had placed two, three and four pickets at every entrance and exit to the premises of the Jacksonville Terminal Company. In addition, said persons were picketing and patrolling the tracks of the Seaboard Air Line Railroad Company at Stockton Street, Acorn Street (corner of Beaver), and the Seaboard Air Line Railroad Company main line at the Church Street crossing in Jacksonville, Florida, as well as the tracks of the Atlantic Coast Line Railroad Company at McQuade and Dennis Streets.

6. Since January 26, 1963, the Florida East Coast Railway Company has been engaged in a labor dispute with various railway labor organizations. By reason thereof, the Jacksonville Terminal Company since said date has reserved a separate entrance and exit to its premises for the employees of the Florida East Coast Railway Company on East Bay Street, Jacksonville, Florida. In addition thereto, the Florida East Coast has substantial facilities in St. Augustine, Florida, as well as throughout the State of Florida.

7. As a direct result of the picketing and patrolling set forth hereinabove, employees of the Jacksonville Terminal Company have refused to report to work as scheduled and required; employees on duty at the time said picketing and patrolling began are refusing to perform switching operations over and across the Church Street crossing. [fol. 14] The various taxicab companies in and about the City of Jacksonville, Florida, are refusing to come on the premises of the Jacksonville Terminal Company for the

purpose of serving passengers; and the Jacksonville Terminal Company facilities and operations described and set forth above because of the provisions of the Interstate Commerce Act, will come to a complete halt and cessation in a matter of a very few hours.

8. Jacksonville Terminal Company is not engaged in any labor dispute with any of the above named labor organizations or any other labor organization.

9. The work stoppage hereinabove described and set forth will result in irreparable harm and injury to the Jacksonville Terminal Company, the various named operating railroads, to the United States Government and to the public at large.

Marshall C. Jennette.

Duly sworn to by Marshall C. Jennette, jurat omitted in printing.

[fol. 15]

AFFIDAVIT OF PHILIP J. LEE

State of Florida
County of Duval

Philip J. Lee, being first duly sworn, deposes and says: That he is the Vice President of the Atlantic Coast Line Railroad Company, a corporation, organized and existing under and by virtue of the laws of the State of Virginia, and in whose behalf he makes this affidavit; that

The Jacksonville Terminal and other interchange and switching facilities located in Duval County are a very necessary adjunct for the railroads serving Jacksonville and practically all of Florida. We are forced to utilize portions of the Jacksonville Terminal as well as such other switching and interchange facilities in Duval County in connection with all of our freight and passenger operations moving to Jacksonville proper, also those trains serv-

ing the peninsula of Florida. This includes the Havana Special, West Coast Champion, East Coast Champion, Florida Special, City of Miami, and South Wind. The East Coast Champion and Florida Special serve the East Coast of Florida and during the present work stoppage of Florida East Coast Railway these trains are continuing to operate through the Jacksonville Terminal, Atlantic Coast Line to Auburndale, thence Seaboard Railroad to West Palm Beach and Miami. The West Coast Champions operating through the Jacksonville Terminal with through Pullman cars from New York, Washington and Chicago serve important Florida cities and resorts such as Gainesville, Ocala, Clearwater, St. Petersburg, Sanford, Orlando, Lakeland, Tampa, Bradenton, Sarasota, Fort Myers and Naples. The tourists utilize these trains very extensively and to stop their operations would seriously restrict the ability of the tourists to reach many of these points.

We operate through the Jacksonville Terminal and other aforementioned switching and interchange facilities extensive freight which is linked with our connections serving [fol. 16] all sections of the United States and providing a service between Peninsular Florida and all points in the United States, Canada and Mexico. These through freight trains furnishing service in both directions between Peninsular Florida and the far reaches of this country, Canada and Mexico are dependent upon the use of the Jacksonville Terminal and said other Duval County facilities. At the present time we are handling from Florida citrus fruit, tomatoes, celery, corn and frozen concentrate, all of which are highly perishable in nature and a disruption of railroad service through the Jacksonville gateway would prove disastrous to the farmers of Florida and thus its economy. Additionally, the growing of sugar cane in Florida has greatly increased as result of the Cuban troubles, and we are presently handling large volumes of raw sugar from South Florida to the refineries at Savannah, Ga., and to the refineries in Louisiana, as there is not suffi-

BLEED THROUGH POOR COPY

cient storage in South Florida to permit the continued cutting of cane and operation of the raw sugar mills without the continuous flow of the raw sugar to the refineries. One of the largest and most important industries in Florida tonnage-wise and on which the entire fertilizer industry of the United States is dependent involves the movement of phosphate rock from Polk County, Florida, which daily moves throughout the nation and to every state in the Union.

As is commonly known, Florida is not classified as an industrial state, and therefore, it is necessary for Florida to obtain a great volume of food supplies and the necessities of life from the large manufacturing centers of the nation. All of this is dependent upon the ability of the railroads to function through the Jacksonville Terminal and said other Duval County switching and interchange facilities.

To illustrate the importance of the Jacksonville Terminal Company facilities, the following tabulation shows number of freight and passenger cars handled through Jacksonville Terminal for the account of FEC as compared with other roads for the month of February, 1966, and for the year 1965.

[fol. 17]

Number of Freight Cars Handled Through Jacksonville Terminal

February, 1966		Year 1965	
For FEC	For Other Railroads	For FEC	For Other Railroads
17,956	41,400	231,787	512,185

Number of Passenger Cars Handled Through Jacksonville Terminal

February, 1966		Year 1965	
For FEC	For Other Railroads	For FEC	For Other Railroads
96	16,614	642	211,277

The Jacksonville Terminal directly serves many large industries in Jacksonville proper which are entirely dependent upon the functioning of that Terminal Company to deliver its traffic. These industries so situated are as follows:

All State Pipe Supply Company
Armstrong Contracting Supply Corporation
Atlantic Company
Bercleve Concrete Products Company
Borden Southern Company
Chitty & Company
W. H. Clark Fruit Company
Cosco Products Company
Cosco Steel Products Company
Geo. P. Coyle & Sons
Crane Supply Company
Crosby Builders Supply Company
Crosby-Knighton Lumber Company
Dixie Galvanizing Company
Duval Rag Company
Evans-Harbor Products Company
Florida Rag Company
Great A & P Tea Company
O'Neal Steel Company
Precast Concrete Products, Inc.
Presto, Inc.
Public Quick Freeze & Cold Storage Company
Railway Express Agency
Salvation Army
Security Mills, Inc.
Specialty Tank and Equipment Company

What has been described for the Atlantic Coast Line equally applies for the Seaboard Railroad, and thus the rail-[fol. 18] road service for Peninsular Florida would be completely stagnated if there should be any interruption in the services available through the Jacksonville Terminal

d other switching and interchange facilities located in val County.

Philip J. Lee, Vice President, Atlantic Coast Line Railroad Company.

Duly sworn to by Philip J. Lee, jurat omitted in printing.

---

ol. 19]

AFFIDAVIT OF W. E. SATTERWHITE

ate of Florida
unty of Duval

Before me, the undersigned authority this day personally peared, W. E. Satterwhite, who being by me first duly orn says:

That he is Assistant Superintendent of the North Florida vision of the Seaboard Air Line Railroad Company, a rporation organized and existing under the laws of the ate of Virginia;

That the Jacksonville Terminal Company and other in-rchange and switching facilities located in Duval County, orida, are a necessary adjunct for the Seaboard Air Line ilroad Company to serve Jacksonville and practically all Florida. The Seaboard must utilize portions of the Jack-nville Terminal Company as well as other switching and erchange facilities in Duval County in connection with eight and passenger operations moving into and out of cksonville and also freight and passenger operations rving the peninsula of Florida. In passenger train opera-ns this includes the Silver Meteor, the Silver Star, the n Land and the Palmland—all of which serve the City of ami and intermediate points in Florida and the Gulf ind which originates in Jacksonville and serves Talla-ssee and New Orleans. The trains serving Miami and ninsula Florida operate through the Jacksonville Termi-l with through Pullman cars from New York and Wash-

ington and serve important Florida cities and resorts, such as West Palm Beach, Miami, Tampa and St. Petersburg. Tourists utilize these trains extensively and to stop their operations would seriously restrict the ability of tourists to reach many of the points in Florida or to return north from those points.

[fol. 20] The Seaboard operates through the Jacksonville Terminal and other switching and interchange facilities extensive freight service which is linked with the Seaboard's connections serving all sections of the United States and providing freight service between peninsula Florida and all other points in the United States. These through freight trains furnish service in both directions between peninsula Florida and the rest of the United States and are dependent upon the use of the Jacksonville Terminal and the said other Duval County facilities. The Seaboard handles in its freight service large volumes of perishables such as Florida citrus, fruit, tomatoes, celery, corn and frozen concentrates, and a disruption of freight service through the Jacksonville Gateway would be disastrous to the economy of Florida and the farmers of this State and would further disrupt the delivery of fresh perishables to northern and mid-western markets. The Seaboard freight service also involves the movement of large quantities of phosphate rock from Central Florida which daily moves throughout the nation into every state in the United States.

The Seaboard freight service also furnishes a great volume of food supplies and necessities of life from large manufacturing centers of the nation to the State of Florida, all of which is dependent upon the ability of the Seaboard to operate through the Jacksonville Terminal and other Duval County switching and interchange facilities.

The Seaboard freight service must operate through the Jacksonville Terminal interchange in order to serve the waterfront area of Jacksonville and the large Maxwell House Coffee plant located on Bay Street in Jacksonville as well as other industries.

Presently pickets (identifying themselves as employees on strike against the Florida East Coast Railway Company) are picketing the Stockton Street crossing of the

21] Seaboard in Jacksonville and that crossing is com-
d solely of Seaboard Air Line Railroad trackage and
not involve the trackage of any other railroad or
inal company.

view of the said picketing of the Jacksonville Terminal
pany, the Stockton Street crossing of the Seaboard
other areas in Jacksonville and Duval County, the Sea-
d cannot furnish freight service to and from Savannah,
gia, and points north throughout the United States as
f said freight service must move through the Jackson-
Terminal Company interchange. This freight service
ves not less than six (6) freight trains per day.

id pickets are also presently picketing the Acorn Street
ing of the Seaboard in Jacksonville and that crossing
mposed solely of Seaboard Air Line Railroad trackage
does not involve trackage of any other railroad or
inal company.

id pickets are also picketing the Church Street cross-
f the Seaboard in Jacksonville and that crossing is
posed solely of Seaboard Air Line Railroad trackage
Jacksonville Terminal Company trackage and does not
ve the trackage of any other railroad or terminal
pany.

e said picketing has already resulted in the employees
e Seaboard refusing to move Seaboard trains across
aid picket lines and will inevitably result in the curtail-
of rail service between Seaboard to Jacksonville,
l County and peninsula Florida as well as to the rest
e United States from Florida. It will also result in the
sity of eliminating passenger train traffic between
oard within the next twenty-four (24) hours.

W. E. Satterwhite.

ly sworn to by W. E. Satterwhite, jurat omitted in
ing.

[fol. 22]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, JACKSONVILLE TERMINAL COMPANY, a corporation, and SEABOARD AIR LINE RAILROAD COMPANY, a corporation, Plaintiffs,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership, and LOWELL KENNEDY, individually and as an official of said Brotherhood; and the members of said organization;

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, an unincorporated association in its own right and as representative of its membership and T. C. BOLAND, individually and as an official of said ORDER; and the members of said organization;

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association in its own right and as representative of its membership and J. E. EASON, individually and as an official of said Brotherhood; and the members of said organization, Defendants.

TEMPORARY RESTRAINING ORDER AND NOTICE OF HEARING ON PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION—May 4, 1966

This cause came on to be heard on Plaintiffs' verified complaint and the affidavits of Philip J. Lee, M. C. Jennette, and W. E. Satterwhite, which are attached to and

[File endorsement omitted]

BLEED THROUGH POOR COPY

made a part of Plaintiffs' motion for a preliminary injunction, and it appearing to the Court that a restraining order, preliminary to a hearing upon the motion for a preliminary injunction, should issue, without notice, because Plaintiffs' employees have been compelled or induced to engage in a work stoppage with resulting termination of railroad ser-
[fol. 23] vices at the Jacksonville Terminal Company and the adjacent passenger tracks and facilities and that Plaintiffs' employees have done so and will continue to do so unless the various picketing in and around said Terminal Company is restrained by order of this Court, and that immediate and irreparable injury, loss and damage will result to Plaintiffs, to thousands of industries, businesses and persons and the United States Government served by Plaintiffs, and to the public, before notice can be served and a hearing had on Plaintiffs' motion for a preliminary injunction.

If Plaintiffs' employees are permitted to engage in a work stoppage, the train operations of Plaintiffs will be paralyzed; that Plaintiffs will be forthwith forced to embargo shipments and curtail or eliminate services in transporting thousands of persons who are daily carried by Plaintiffs and connecting lines of railroad, and in transporting great quantities of United States mail, goods and properties of industry, including perishable foodstuffs which are continuously and necessarily carried on said railroads, which will deprive Plaintiffs, the industries, businesses and persons affected, other interested railroads, and the public, of large amounts of revenue and of goods and foodstuffs; that such damages cannot be wholly estimated, calculated or compensated for in money, and that said damages will be immediate, substantial and irreparable.

Now, Therefore, it is ordered that Defendants, their officers, agents, servants, employees, representatives, attorneys and all other persons acting at the direction of or in active concert or participation with them, and all
[fol. 24] persons receiving notice of this order, be and they are hereby restrained from:

(a) Ordering, directing, authorizing, recommending, sanctioning, starting, continuing, permitting, or participating in the patrolling, picketing or blockading of, or the interference with, the entrances or exits of any kind or description, used by the employees of the Plaintiffs in connection with their work or in land, buildings, facilities or other property operated, owned or controlled by Plaintiffs; provided, however, that the present order shall not apply to the gate located at Bay and Stuart Streets designated for use by FEC employees;

(b) causing, compelling or inducing the employees of the Plaintiffs to cease performing the duties of their employment in connection with the operation of the various Plaintiffs, particularly with respect to the transportation of passengers or to the receiving, transportation and handling of goods of any shipper, receiver or common carrier, or causing, compelling or inducing the Plaintiffs or its employees or representatives to fail to provide facilities for the transportation of property belonging to any shipper, receiver, or common carrier, or to fail to carry, transmit or deliver the United States mail, or to fail to provide transportation for passengers, or causing, compelling or inducing the plaintiff or its employees to fail to perform their obligations as required by law;

(c) causing, compelling and inducing the plaintiffs, or its employees or representatives, to fail to perform any of their lawful duties, including the operating of locomotives, cars, or trains, or to interfere in any way with the delivery, loading, unloading, dispatch or movement of any of Plaintiffs rolling stock, engines, cars, equipment or trains or any of the contents or any of the passengers thereof;

[fol. 25] (d) interfering with employees of Plaintiffs in the performance of their respective duties of their employment by fines or otherwise, or paying any benefit and giving any money or anything of value to any employee of Plaintiffs who refuse a lawful order to perform services for Plaintiffs in accordance with any collective bargaining

greement covering said services in, on or about Plain-
ffs' facilities, or supporting in any way any employee of
laintiffs who refuses to obey a lawful order or re-
uest to perform such services. This order shall be effec-
ve upon Plaintiffs' furnishing bond in the amount of
0,000.00.

Done and Ordered in Chambers, Jacksonville, Florida,
is 4th day of May, 1966. 4:30 P.M.

Wm. A. McRae, Jr., United States District Judge.

---

ol. 26]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

[Title omitted]

OTICE OF APPEAL TO COURT OF APPEALS UNDER RULE 73(b), 29 USC §110, AND 28 USC §1292 (a)(1)—Filed May 5, 1966

Notice is hereby given that the defendants, Brotherhood Railroad Trainmen, a labor organization, Order of Rail-ay Conductors and Brakemen, a labor organization, and rotherhood of Locomotive Firemen and Enginemen, a bor organization, hereby appeal to the United States ourt of Appeals for the Fifth Circuit from the injunctive der entered in this action on May 4, 1966.

Neal Rutledge, Rutledge & Milledge, 601 Flagler Federal Building, Miami, Florida 33132;

Allan Milledge, Rutledge & Milledge, 601 Flagler Federal Building, Miami, Florida 33132;

[fol. 27] Tom McAliley, Beckham & McAliley, 1010 Concord Building, Miami, Florida;

[File endorsement omitted]

Alan Schwartz, Horton & Schwartz, 308 Concord Building, Miami, Florida;

Attorneys for Defendants.

Certificate of Service (omitted in printing).

[fol. 28]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

[Title omitted]

MOTION FOR STAY—Filed May 5, 1966

The defendants respectfully move the Court for a stay pending appeal of its injunctive order entered at 4:30 p.m. on May 4, 1966, entitled "Temporary Restraining Order and Notice of Hearing on Plaintiffs' Motion for a Preliminary Injunction" and for grounds would show:

1. The order is incorrectly labeled as a temporary restraining order when it is in fact a preliminary injunction. The said order recites that it was entered preliminary to a hearing and without notice, when in fact notice was given and a lengthy hearing was held. Said hearing commenced at 11:30 a.m. and was concluded at approximately 2:30 p.m. The order recites that it was entered on affidavits when in fact witnesses were presented to the Court and were cross-examined. The order was entered after notice, after hearing, after evidence was presented, and after lengthy arguments citing and discussing the applicable law. Further said order contains no hearing date and has no time limitation for its duration.

2. No authority was presented to the Court by way of briefs or in argument or otherwise which would give to this Court the jurisdiction or authority to enter any injunctive order in this major labor dispute. This is a case

[File endorsement omitted]

clearly arising out of a labor dispute and this Court lacks jurisdiction under the Norris-LaGuardia Act, 29 USC 101-115, to issue the injunctive order here involved.

3. The order dated May 4, 1966 recites no authority for its issuance and was entered without jurisdiction. No findings as required by 29 USC 107 as a condition to issuance of an injunctive order were made.

[fol. 29] 4. Notice of Appeal was filed at approximately 9:15 a.m. on May 5, 1966.

5. The effect of the injunctive order on appeal is to prohibit peaceful picketing by the appellants of the property and facilities of the Jacksonville Terminal Company which are used by the Florida East Coast Railway Company in its day-to-day operations as an integral part of its system. The appellants are engaged in a lawful strike against the Florida East Coast Railway Company under the Railway Labor Act, 45 USC 151, et seq. The picketing thus enjoined had proven to be most effective as an economic force in that dispute. Should the injunction remain in effect pending appeal, the appellants will be done irreparable injury in that their right to apply lawful economic pressure at a critical time will be irreparably lost and the labor dispute will be prolonged and continued indefinitely in time and unresolved in result and, as in other similar disputes in which the FEC was a party, interminable litigation will result. Moreover, the picketers enjoined, who live throughout the state and elsewhere, are now in the immediate area. Should the injunction not be stayed, they will be compelled to return to their homes, and the expense and difficulties in reassembling them and reestablishing an effective picketing force would be extremely great, if not impossible.

Neal Rutledge, Rutledge & Milledge, 601 Flagler Federal Building, Miami, Florida 33132; Allan Milledge, Rutledge & Milledge, 601 Flagler Federal Building, Miami, Florida 33132; Tom Mc-

Aliley, Beckham & McAliley, 1010 Concord Building, Miami, Florida; Alan Schwartz, Horton & Schwartz, 308 Concord Building, Miami, Florida, Attorneys for Defendants.

[fol. 30] Certificate of Service (omitted in printing).

[fol. 31]

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

[Title omitted]

ORDER DENYING MOTION FOR STAY—May 5, 1966

Ordered:

Defendants' Motion for Stay is denied.

Done and Ordered at Jacksonville, Florida, this 5th day of May, 1966.

William A. McRae, Jr., Judge.

Copies to counsel.

[File endorsement omitted]

[fol. 32]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

[Title omitted]

MOTION TO SET TIME FOR HEARING ON PLAINTIFFS' APPLICATION FOR TEMPORARY INJUNCTION
—Filed May 5, 1966

Atlantic Coast Line Railroad Company, a corporation, Jacksonville Terminal Company, a corporation, and Seaboard Air Line Railroad Company, a corporation, move the Court to set a time, within 10 days after May 4, 1966, the date of this Court's temporary restraining order, for hearing upon plaintiffs' application for temporary injunction in accordance with the prayer of the complaint.

[fol. 33]

McCarthy, Adams and Foote, 801 Atlantic Bank Building, Jacksonville, Florida; Cox, Grissett and Webb, 630 American Heritage Life Building, Jacksonville, Florida; Rogers, Towers, Bailey, Jones & Gay, By C. D. Towers, Jr., 1300 Florida Title Building, Jacksonville, Florida 32202.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 34]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

[Title omitted]

ORDER SETTING HEARING ON APPLICATION FOR TEMPORARY INJUNCTION—May 5, 1966

This matter being heard upon Plaintiffs' motion to set a time within ten (10) days from May 4, 1966, for hearing upon Plaintiffs' application for temporary injunction in accordance with the prayers of the Complaint, it is

Ordered that the hearing for Plaintiffs' application for temporary injunction is set for the 9th day of May, 1966, at 11:30 o'clock A.M.

Done and Ordered in Chambers, this 5th day of May, 1966.

William A. McRae, Jr., United States District Judge.

[File endorsement omitted]

[fol. 35]

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, JACKSONVILLE TERMINAL COMPANY, a corporation, and SEABOARD AIR LINE RAILROAD COMPANY, a corporation, Plaintiffs,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership, and LOWELL KENNEDY, individually, and an official of said Brotherhood; and the members of said organization;

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, an unincorporated association in its own right and as representative of its membership and T. C. BOLAND, individually, and as an official of said ORDER; and the members of said organization;

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association in its own right and as representative of its membership, and J. E. EASON, individually and as an official of said Brotherhood; and the members of said organization, Defendants.

ORDER FOR PRELIMINARY INJUNCTION—May 10, 1966

Upon consideration of the application by plaintiffs, Atlantic Coast Line Railroad Company, Jacksonville Terminal Company and Seaboard Air Line Railroad Company for a preliminary injunction, and upon plaintiffs' verified [fol. 36] Complaint for injunction and upon evidence intro-

[File endorsement omitted]

duced at the hearing and upon arguments submitted by all parties, the Court makes the following findings of fact and conclusions of law after hearing, with due notice, on May 9, 1966:

Findings of Fact and Conclusions of Law

1. Plaintiffs are common carriers engaged in the transportation of passengers and property by railroad and each is a connecting line with the other, within the meaning and application of the Interstate Commerce Act, 49 U.S.C. § 1.

2. Defendants are unincorporated labor unions, individuals who are members and officers of the defendant labor unions and the members of the defendant labor unions.

3. Since April 24, 1966, all of the defendant unions have been on strike against the Florida East Coast Railway Company. That strike has not been resolved.

4. During the early morning hours of May 4, 1966, defendant Brotherhood of Railroad Trainmen and its officers and members began to picket the premises of plaintiff Jacksonville Terminal Company at numerous places. Defendants Order of Railway Conductors and Brakemen and Brotherhood of Locomotive Firemen and Enginemen have made threats to engage in similar conduct.

5. The picketing in question consisted of carrying plac- [fol. 37] ards to the effect that the Brotherhood of Railroad Trainmen is on strike against the Florida East Coast Railway Company. The placards requested that other railroad men not cross the picket lines.

6. As a result of the picketing, hundreds of employees of the plaintiffs refused to report for work and did not report for work until the picket lines were removed as a result of entry of a temporary restraining order at 4:30 o'clock P.M. on Wednesday, May 4, 1966.

7. Plaintiff Jacksonville Terminal Company owns and erates a rail terminal, rail interchange, and the only pas-nger station located in Jacksonville, Florida. Jackson-le Terminal Company serves the government of the ited States under mail contract, the Atlantic Coast Line ilroad Company, the Seaboard Air Line Railroad Com-ny, the Southern Railway Company, the Georgia, South-n & Florida Railway Company, the Florida East Coast ilway Company and numerous shippers whose facilities e located adjacent to property of Jacksonville Terminal mpany. The bulk of mail entering and leaving the State Florida is handled in and processed by Jacksonville rminal Company. All passenger service of Atlantic ast Line Railroad Company entering and leaving the ate of Florida passes through Jacksonville Terminal mpany. All of the passenger traffic of Seaboard Air ne Railroad Company coming into Jacksonville, Florida, d substantially all of the freight traffic of Seaboard Air ol. 38] Line Railroad Company coming into and leaving ıval County, Florida, is serviced by Jacksonville Ter-nal Company facilities.

8. The threatened activities of defendants, unless re-ained, will cause incalculable damage upon innocent rties other than plaintiffs, in that most of the Atlantic ast Line passenger service into or out of the State of orida will be eliminated; most of the passenger traffic Seaboard Air Line Railroad Company into and out of City of Jacksonville, Florida, will be eliminated; most the freight traffic of Atlantic Coast Line Railroad Com-ny into and out of the State of Florida and substantially of the freight traffic of Seaboard Air Line Railroad mpany into and out of Duval County, Florida, will be minated—all to the great detriment of the general pub-; that the transportation and processing of the mails o and out of the State of Florida will be severely ob-ucted and hampered; that many rail passengers will be evented from traveling by rail; and that military bases rved by plaintiffs will be adversely affected.

9. The prohibitions of the Norris-LaGuardia Act, 29 U.S.C. § 104, are not applicable to the instant proceeding and do not deprive the Court of jurisdiction to enter the preliminary injunction sought by plaintiffs herein.

10. Plaintiffs have been subjected to irreparable injury for which no adequate remedy at law exists.

[fol. 39] 11. A preliminary injunction is necessary to restore the parties to the positions and conditions existing prior to the commission of the acts of the defendants and to maintain those conditions during the pendency of this action and until final determination of the controversy herein.

Upon consideration, it is

Ordered and Decreed, until further Order of this Court:

1. That defendants, their officers, agents, servants, employees, representatives, attorneys, members and all of the persons acting at the direction of or in active concert or participation with them, and all persons receiving notice of this Order, be and they are hereby enjoined from:

(a) Ordering, directing, authorizing, recommending, sanctioning, starting, continuing, permitting, or participating in the patrolling, picketing or blockading of, or the interference with, the entrances or exits of any kind or descriptions, used by the employees of the plaintiffs in connection with their work or in land, buildings, facilities or other property operated, owned or controlled by plaintiffs; provided, however, that the present order shall not apply to the gate located at Bay and Stuart Streets designated for use by Florida East Coast Railway Company employees;

(b) Causing, compelling or inducing the employees of [fol. 40] the plaintiffs to cease performing the duties of their employment in connection with the operation of the various plaintiffs, particularly with respect to the transportation of passengers or to the receiving, transportation

nd handling of goods of any shipper, receiver or common arrier, or causing, compelling or inducing the plaintiffs or eir employees or representatives to fail to provide facilies for the transportation of property belonging to any hipper, receiver, or common carrier, or to fail to carry, ransmit or deliver the United States mail, or to fail to rovide transportation for passengers, or causing, comelling or inducing the plaintiffs or their employees to fail perform their obligations as required by law;

(c) Causing, compelling and inducing the plaintiffs, or eir employees or representatives, to fail to perform any f their lawful duties, including the operation of locomoives, cars, or trains, or to interfere in any way with the elivery, loading, unloading, dispatch or movement of any f plaintiffs' rolling stock, engines, cars, equipment or rains or any of the contents or any of the passengers hereof;

(d) Interfering with employees of plaintiffs in the performance of their respective duties of their employment by nes or otherwise, or paying any benefit and giving any oney or anything of value to any employee of plaintiffs ho refuse a lawful order to perform services for plaintiffs fol. 41] in connection with any collective bargaining greement covering said services in, on, or about plainiffs' facilities, or supporting in any way any employee of laintiffs who refuses to obey a lawful order or request perform such services.

2. This Writ of Injunction shall be effective at twelve 'clock noon, May 10, 1966, upon the furnishing of a bond n the amount of $25,000.00.

3. Jurisdiction of this cause is retained by the Court for he purpose of making final disposition of the controversy erein.

Done and Ordered at Jacksonville, Florida, this 10th day f May, 1966.

William A. McRae, Jr., Judge.

Copies to counsel

[fol. 42]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 66-357-Civ-J

[Title omitted]

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT UNDER RULE 73(b), 29 U.S.C. §110, and 28 U.S.C. §1292 (a)(1)—Filed May 10, 1966

Notice is hereby given that the defendants, Brotherhood of Railroad Trainmen, a labor organization, Order of Railway Conductors and Brakemen, a labor organization; and the Brotherhood of Locomotive Firemen and Enginemen, a labor organization; and Lowell Kennedy, an individual; and T. C. Boland, an individual; and J. E. Eason, an individual, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the temporary injunction entered in this cause on May 10, 1966.

Rutledge & Milledge, Neal Rutledge, Allan Milledge, 601 Flagler Federal Building, 111 N. E. First Street, Miami, Florida 33132, Attorneys for Appellants, by Neal Rutledge.

[File endorsement omitted]

[fol. 43] Certificate of Service (omitted in printing).

ol. 44]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

[Title omitted]

BOND ON APPEAL—Filed May 10, 1966

Know All Men by These Presents That we, Brotherhood Railroad Trainmen, a labor organization, Order of Railay Conductors & Brakemen, a labor organization, and rotherhood of Locomotive Firemen and Enginemen, a bor organization, as principals, and United States Fidel- and Guaranty Company, as surety, are held firmly und unto Atlantic Coast Line Railroad Company, a corration, Jacksonville Terminal Company, a corporation, d Seaboard Air Line Railroad Company, a corporation, the sum of Two Hundred Fifty ($250.00) Dollars to be id to the said Atlantic Coast Line Railroad Company, cksonville Terminal Company, and Seaboard Air Line ilroad Company to which payment will and truly to be de we bind ourselves, our successors and assigns, jointly d severally, by these presents.

Sealed with our seals and dated this 10th day of May, 66.

l. 45] Whereas, on May 10, 1966 an order was entered the above-styled action granting a preliminary injunc- n against the defendants, and Whereas, the defendants e duly filed a notice of appeal from said order to the ited States Court of Appeals for the Fifth Circuit,

ow Therefore, the condition of this bond is such that he said Brotherhood of Railroad Trainmen, Order of lway Conductors and Brakemen, and Brotherhood of omotive Firemen and Enginemen shall pay all costs if

[File endorsement omitted]

the appeal is dismissed or the order affirmed, or such costs as the appellate court may award if the order is modified, then this obligation to be void, otherwise to remain in full force and effect.

Brotherhood of Railroad Trainmen, Order of Railway Conductors and Brakemen, Brotherhood of Locomotive Firemen & Enginemen, by R. C. Moore, Deputy President, Principals.

United States Fidelity & Guaranty Company, by B. A. Caldwell, Its Attorney-in-Fact, Surety.

[fol. 45a] General Power of Attorney (omitted in printing).

[fol. 46] Clerk's Certificate (omitted in printing).

[fol. 47]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 23,659

BROTHERHOOD OF RAILROAD TRAINMEN, et al., Appellants,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, et al., Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ORDER ON MOTION FOR A STAY OF PRELIMINARY INJUNCTION PENDING APPEAL—May 18, 1966

Before Tuttle, Chief Judge, Rives, Circuit Judge, and Choate, District Judge.

By the Court:

The motion of the appellants for a stay pending appeal of the preliminary injunction entered in this cause on May 10, 1966 is Granted subject to the further orders of this Court, provided, however, that such stay shall become effective at 11:00 A.M. on Tuesday, May 24, 1966.

The appeal from the order granting preliminary injunction is set for hearing on its merits at the Court of Appeals Courtroom in Atlanta, Georgia, on Monday, May 23, 1966, at 2:00 P.M.

[File endorsement omitted]

[fol. 48]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

[Title omitted]

MOTION TO STAY MANDATE AND ORDER DENYING SAME—May 24, 1966

The appellees, Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company, and Jacksonville Terminal Company, move the court to stay the issuance of the mandate in this matter and not permit the same to be issued until the further order of the court on the ground and for the reason that appellees expect and intend in good faith within the time allowed by law to apply to the Supreme Court of the United States of America by petition for a review on writ of certiorari of the decision and judgment rendered in favor of the appellants and against the appellees in the above entitled action. Appellees further show unto the court that they are ready, able and willing to make a good and sufficient bond conditioned as provided by law in said cause or for an extension of the bond in the amount of $25,000.00 filed in the United States District Court for the Middle District of Florida, Jacksonville Division, under the requirements of the preliminary injunction previously entered herein.

[fol. 49] Appellees further move the court to continue in effect the preliminary injunction issued by the court below and to extend the effective date of the stay order entered herein on May 18, 1966, by this court pending the filing of the petition for certiorari in the Supreme Court of the United States of America.

Wherefore, appellees pray that the court make and enter an appropriate order herein staying the issuance of the

[File endorsement omitted]

ndate in the above entitled action and extending the ctive date of the stay entered herein and continuing injunction in effect and that the court fix the amount ond required of appellees and that they be given a onable time in which to make, execute and file said d.

Prime F. Osborn, III, 500 Water Street, Jacksonville, Florida 32202 and Rogers, Towers, Bailey, Jones & Gay, By C. D. Towers, Jr., 1300 Florida Title Building, Jacksonville, Florida 32202, Attorneys for Appellee, Atlantic Coast Line Railroad Company.

Cox, Grissett & Webb, By W. E. Grissett, 630 American Heritage Life Building, Jacksonville, Florida 32202, Attorneys for Appellee, Seaboard Air Line Railroad Company.

McCarthy, Adams & Foote, By Adam G. Adams, 801 Atlantic Bank Building, Jacksonville, Florida 32202, Attorneys for Appellee, Jacksonville Terminal Company.

50] I do certify that a copy hereof has been furd to Rutledge & Milledge, Attorneys for Appellants, rsonal delivery, this May 23, 1966.

W. E. Grissett, Attorney.

within motion is Denied this 24th day of May, 1966. he Court

Elbert P. Tuttle, Chief Judge.

[fol. 51]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 23,659

BROTHERHOOD OF RAILROAD TRAINMEN, et al., Appellants,

v.

ATLANTIC COAST LINE RAILROAD COMPANY, et al., Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before Tuttle, Chief Judge, Rives, Circuit Judge, and Choate, District Judge.

JUDGMENT—May 24, 1966

Order:

This is an appeal from the grant of an injunction against appellants, Brotherhood of Railroad Trainmen, et al., to prohibit picketing around the property of the Jacksonville Terminal Company. The Court concludes that the Norris-LaGuardia Act, 29 U.S.C.A. §101, et seq., deprives the Federal courts of jurisdiction to enter an injunction such as was issued by the trial court on May 16, 1966. Therefore, the judgment of the trial court is Reversed.

The opinion of the Court will follow.

The mandate shall issue forthwith.

Judge Choate dissents.

[File endorsement omitted]

[fol. 52]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 23659

BROTHERHOOD OF RAILROAD TRAINMEN, et al., Appellants,

versus

ATLANTIC COAST LINE RAILROAD COMPANY, et al., Appellees.

Appeal from the United States District Court for the Middle District of Florida.

OPINION—June 15, 1966

Before Tuttle, Chief Judge, Rives, Circuit Judge, and Choate, District Judge.

Tuttle, Chief Judge: The appellant-Brotherhood and the Florida East Coast Railroad (hereinafter, "FEC") have been involved in a prolonged labor controversy, more fully described by this court at 336 F.2d 172 (see also 348 F.2d 682), centering around the company's attempt, in 1963, to [fol. 53] institute certain changes in the collective bargaining agreement. While this court held that changes reasonably necessary to enable FEC to continue to operate could be made, the railroad, at the same time, was prohibited from effectuating other deviations until the proper statutory procedures had been exhausted. 336 F.2d at 182; see .... U.S. ....., 34 L W 4415, affirming 348 F.2d 682. For our purposes, this "exhaustion" process has been fully followed to no avail, and the parties now are relegated to self-help in attempting to resolve their differences, see *Brotherhood of Locomotive Engineers* v. *Baltimore & Ohio R. Co.*, 372 U.S. 284, 291 (1963). This latter context provides the setting for the present litigation.

Thus, dipping into its economic arsenal, the FEC completely revised the rules, rates of pay and working conditions contained in existing collective agreements with employees in the crafts of trainmen, yardmen, conductors and hostlers, thereby implementing most of the changes which it had attempted to institute in 1963. The appellant Brotherhoods retaliated by striking the FEC on April 24, 1966, and subsequently, on May 4, 1966, union members commenced peacefully picketing the premises of the Jacksonville Terminal Company (hereinafter, "Terminal Company"), in an attempt to appeal to the appellees' employees to cease providing certain services, whatever they might be, for the FEC. These services include the following: (a) one-third of all freight interchange service performed by the Terminal Company; (b) minor repairs and maintenance on FEC cars and locomotives; (c) track maintenance, signaling and switching services; plus (d) whatever additional service may be contemplated in the definition of [fol. 54] "car service" found in 49 U.S.C. Section 1(10). Since the relationship of the Terminal Company to the disputants bears substantially upon this case, it must be described before we proceed to the merits.

The appellee-Terminal Company is a Florida corporation, the stock of which is owned in equal shares by the Atlantic Coast Line (hereinafter, "ACL"), Seaboard Air Lines (hereinafter, "SAL"), FEC and Southern Railroads. It owns and operates a rail terminal, rail yards, interchange facilities and the only passenger station located in Duval County, Florida, and provides passenger, freight and mail service for the state of Florida by furnishing connecting services to the above four railroads, as well as to the Georgia Southern and Florida Railway. The Terminal Company has its own officers and employees, who work under separate collective bargaining agreements negotiated between it and the respective unions which represent its employees. However, despite the legal separateness of the Terminal Company's entity and operation, it cannot be disputed that the facilities and services provided

by the Terminal Company *in fact* constitute an integral part of the day-to-day operations of the FEC, which continues to operate both passenger and freight trains by means of its own striker replacement crews.

At this point, in order more fully to set out the factual stage for this case, it must be noted that the Terminal Company employees allegedly perform such work and services for the FEC pursuant to the terms of a preliminary injunction entered by the lower court on January 30, 1963, [fol. 55] in case No. 63-16-Civil J, *Florida East Coast R. Co.* v. *Jacksonville Terminal Co., et al.* This latter injunction was obtained by the FEC in order to assure that its operations would not be disrupted by the threatened work stoppage by Terminal Company employees, in response to the threatened picketing of the Terminal Company's premises by striking FEC employees. The asserted bases for the issuance of said injunction were (a) defendants' violation of FEC's rights under an "Operating and Guaranty Agreement" between FEC, Terminal Company, ACL, SAL, Southern and Georgia Southern and Florida, and (b) defendants' refusal to perform duties owed FEC under the Interstate Commerce Act. Although the lower court's order specifically purported to bind the employees of both the defendant Terminal Company and the Railroad defendants, the court denied an application by the union representatives of said employees to intervene in an attempt to dissolve this injunction. The preliminary injunction issued in said Case No. 63-16 remains in effect at this time. It was not appealed, since the brotherhoods were not permitted to intervene, and thus there was no aggrieved party. The plaintiffs-appellees in the instant case contend that if this court stays the injunction entered below, they will be forced, through no fault of their own, to violate the outstanding injunction entered in Case No. 63-16.

Appellants' picketing of appellees' premises can be described as peaceful and effective. The picketing was not limited to the gate allegedly "designated" for entrance

and exit of FEC employees; rather, it covered substan- [fol. 56] tially the entire Terminal Company premises, as well as other contiguous sites in Duval County which were under the sole control and operation of the ACL and SAL. As a result of the picketing, hundreds of appellees' employees refused to work. However, the temporary restraining order entered by the lower court in this action caused the pickets to be removed approximately thirteen hours after the time of their commencement.

The specific purpose of the appellants' picketing in this case is highlighted by the testimony of Mr. Raymond C. Moore, Deputy President, Brotherhood of Railroad Trainmen, given at the Preliminary Injunction hearing, to the effect that if the Terminal Company "cease to provide services . . . for the FEC and cease to handle movement of FEC trains on its property," the pickets would be removed.

Attempting to translate this factual description of appellant's activities into labor jargon, for purposes of legal analysis, this was an attempt, through peaceful picketing, to elicit a secondary boycott of the FEC by the appellee-companies, which depended for its success upon the aid of appellees' employees in refusing to cross appellants' picket line. [Perhaps appellants' activity could be more simply described as an attempt to elicit a "secondary *labor* boycott" on the part of appellees' employees.].

Appellants maintain that the provisions of the Norris-LaGuardia Act, 29 U.S.C. Section 101 *et seq.* deprive the district court of jurisdiction to enjoin the picketing here involved. The District Court, without elaborating, held [fol. 57] that the Norris-LaGuardia prohibition was "not applicable to the instant proceedings . . ." and enjoined the picketing, presumably upon the basis that it unlawfully interfered with legal obligations which the appellees owed the FEC by virtue of (a) the Operating and Guaranty Agreement; (b) the Interstate Commerce Act; and (c) the injunction previously entered in Case No. 63-16.

The applicable sections of Norris-LaGuardia provide as follows:

Section 4 (29 U.S.C. Section 104):

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

. . . .

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

. . . .

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified."

fol. 58] Section 13 (29 U.S.C. Section 113):

When used in this chapter, and for the purposes of this chapter—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers

or associations of employers and one or more employers or associations of employers; (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or [fol. 59] agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer or employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia. Mar. 23, 1932, c. 90, §13, 47 Stat. 73."

In light of the history underlying the passage of this Act,[1] especially the unions' prior unsuccessful attempt,

[1] An excellent discussion of the events leading up to and culminating in the passage of Norris-LaGuardia is contained in Gregory, *Labor and the Law*, 158-199 (2d Rev. ed. 1961).

in Sections 6 and 20 of the Clayton Act (38 Stat. 731 and 738), to remove the federal courts from the injunction granting business in a similarly described context,[2] we [fol. 60] are not surprised to find a paucity of decisions dealing directly with the question of whether so-called "secondary boycott" activity of employees and unions may be within the protection of Norris-LaGuardia. Like Justice Frankfurter, reputedly the author of the Act, we would have assumed that the jurisdictional limitations of Norris-LaGuardia apply to secondary boycotts, see *Bakery Sales Drivers Union* v. *Wagshal*, 333 U.S. 437, 442, 444 (1948); *Amalgamated Ass'n of Street, Electric Ry. & Motor Coach Employees* v. *Dixie Motor Coach Corp.*, 170 F. 2d 902 (8 Cir., 1948). However, since there appears to be no authoritative Supreme Court holding to this effect

---

[2] This prior effort was rendered abortive by the Supreme Court in Duplex Printing Press Co. v. Deering, 254 U.S. 443 (1921), which involved an attempt by an international union to unionize a non-union printing press company. Although the non-union factory in question was located in Michigan, the union exerted pressure, not directly upon the factory, but rather, upon its customers and their employees. The means of exerting said pressure may be described legally as a "secondary *labor* boycott"—members of the union refusing to work on the company's presses where they were installed or to work for anyone who used them—to be distinguished from the instant case, where the pressure upon the "secondary employees" was initiated by striking employees of the "primary employer," FEC. The Supreme Court held that the anti-injunction provisions of §20 of the Clayton Act could be invoked only by employees "who are proximately and substantially concerned as parties to an actual dispute respecting the terms or conditions of *their own* employment . . ." (Emphasis added) and only in the context of "particular industrial controversies, not a general class war." 254 U.S. at 472.

In a strong dissent, Justice Brandeis (joined by Justices Holmes and Clarke) concluded that in the Clayton Act Congress had declared "the right of industrial combatants to push their struggle to the limits of the justification of self-interest," 254 U.S. 488, and he articulated the interest of a union in the terms and conditions of employment prevailing in non-union plants in the same industry, according to the better-reasoned common law decisions, *id.* at 480-83.

and since the contrary proposition was so forcefully argued by appellees, we proceed to examine the merits of this question. Before passing, it should be emphasized that we here deal only with the enjoinability of appellants' activity and not with its legality for any other purpose.[3] [fol. 61] At first blush, giving the terms of the Act their literal meaning,[4] this appears to be a "case involving or growing out of a labor dispute" (Section 4, 29 U.S.C.A. Section 104), since it "involves persons who are engaged in the same industry, trade, craft, or occupation" (Section 13, 29 U.S.C.A. Section 113). Accordingly, a literal reading of the Act would prevent any federal court from issuing an injunction "to prohibit any person or persons participating or interested in such dispute . . . from . . . giving publicity to the existence of, or the facts involved in, any labor dispute . . . by advertising . . . patrolling, or by any other method not involving fraud or violence" (Section 4, 29 U.S.C.A. Section 104). The surface appeal of this literal construction of the Act is reinforced by the view that in such a common industry context the responses of employees of the secondary employer are not totally sympathetic, but rather, are motivated partially by the self-interest of the responding employees. Such self-interest may be said to lie in their hope that in helping to further the bargaining position of their "brothers,"

---

[3] In Norris-LaGuardia, Congress did not, as it had done in the Clayton Act, make the conduct listed lawful for all purposes. The most logical inference from this fact is that in Norris-LaGuardia Congress intended only to remedy abuses of judicial equity power relating to injunctions, allowing the law relating to the "legality" of the described activity for other purposes to develop in the courts.

[4] Of course, this court is not required to accept this literal construction, under the "familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of the makers." NLRB v. Fruit & Vegetable Packers, etc., 377 U.S. 58, 72 (1964) (quoting from Holy Trinity Church v. United States, 143 U.S. 457, 459).

hey are, at the same time, strengthening their own future osition."[5]

fol. 62] On the facts here, however, the court is not oreed to rely upon this literal construction of the Act in olding that Norris-LaGuardia is applicable, since the nion's position finds even stronger support when measured ccording to traditional economic self-interest justification oncepts, which we hold are applicable to determine the ntended scope of Norris-LaGuardia protection. Although here does not appear to be direct Supreme Court authority for this latter proposition, we find it to be implicit n Justice Brandeis' dissent in the *Duplex* case (see note 2, *upra*) together with the subsequent passage of Norris-LaGuardia.[6]

---

[5] Of course, this same argument also would apply to the situation where the only link between the picketing union and the responding employees is the "brotherhood" they share as members f the organized labor movement, whenever the ultimate result ould be to strengthen unionism as a whole. Without attempting o decide exactly where Congress intended to draw the line of Norris-LaGuardia protection, we nevertheless note that the interest hared by organized labor is much more remote than the common ndustrial interest shared by the employees in this case. Nor does he interest shared by organized labor come within a literal read-ng of the Act, as does the common industrial interest.

[6] Implicit support for this holding also may be found in New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552, 562-63 1938). (Norris-LaGuardia passed to overcome qualifying effects f Duplex decision). And cf. Carpenters & Joiners Union v. Ritter's Cafe, 315 U.S. 722, 724-28 (1942); United States v. Hutcheson, 312 U.S. 219, 231-36 (1941). These latter two cases upport the proposition that the proper framework for a Norris-LaGuardia "labor dispute" falls substantially short of an all-out lass war, unrelated to fairly direct economic interests of the lisputants.

In the words of Professor Charles O. Gregory:

> "It is as if Congress had said in [the Norris-LaGuardia] act:
>
> "This you may do, using the techniques we have suggested, as long as you can show that your union economic program, conceived as you and not anyone else sees it, is affected by the existing employment conditions in the units of the in-

As we see it, this "economic self-interest" test, by definition, must be primarily a factual inquiry. In this case [fol. 63] the picketing union, allegedly attempting to limit the scope of its appeal to its dispute with FEC,[7] had an obvious interest in putting a stop to the Terminal Company's performing services related to the normal, day-to-day operation of FEC trains—operating with striker replacement crews.[8] A similar interest is present in any case in which a labor group attempts to bring secondary pressure upon the employer with whom its primary dispute exists by means of exerting primary pressure upon a secondary employer, who has aligned himself with the primary employer in some substantial manner—here by providing certain essential services and facilities to the primary employer, FEC.[9]

Turning next to a further examination of the economic interests of the responding employees of the secondary employer-appellees, it should be emphasized that their interests go beyond the "common industrial interest" discussed above. It can be stated unequivocally that Seaboard and FEC are in direct competition for passenger

---

dustry with which you are concerned. We have instructed the judges to withhold the use of the injunction against your self-help coercive activities directed along these lines. From now on it is up to you union people to promote your own economic interests, as you see them, within the area of conflict we have defined.' "

Gregory, *Labor and the Law*, 192 (2d Rev. ed. 1961).

[8] Compare United Steelworkers v. NLRB, 376 U.S. 492 (1964).

[7] The picket signs bore the following:

"Fellow Railroad Men
Do Not Cross or Assist FEC
B of R T on Legal Strike Against FEC
Please Make Common Cause With Us
In Major Dispute Against FEC"

[9] Compare NLRB v. Fruit & Vegetable Packers, etc., 377 U.S. 58 (1964) (substantial alignment present) with Carpenter's & Joiners Union v. Ritter's Cafe, 315 U.S. 722 (1942) (no alignment at all).

and freight traffic south of West Palm Beach. As far as the ACL and FEC are concerned, the competition, although less direct, cannot be said to be non-existent, especially between Jacksonville and a line drawn from Orlando to [fol. 64] the Atlantic Ocean. The significance of this competition lies in the fact that the FEC, by changing work rules[10] and lowering wages, presents a direct threat to the job security of the employees of SAL and ACL." In other words, by operating under such lower than union standards of employment, the FEC enjoys a competitive advantage, which may enable it to increase its share of traffic, vis a vis, ACL and SAL, and, consequently, the latter two railroads could be forced either (a) lower their standards or (b) lay off a sufficient number of employees to compensate for their reduced traffic share. Accordingly, it is improper to regard the responses of ACL and SAL employees as merely sympathetic.

Thus, it is clear that the economic self-interest test is met here from not one, but two, viewpoints: (a) the economic interests of the defendant-picketers themselves, and (b) the economic interests of the responding employees of the secondary employers, without whose aid the picketing would be ineffectual. Accordingly, the district court was prohibited from issuing the injunction by Norris-LaGuardia.

One final point: Appellees argue that under the circumstances of this case Norris-LaGuardia should be "accommodated" to the Interstate Commerce Act and the Railway Labor Act, so that (a) appellees' duty to the public under the former act can be carried out and (b) the na- [fol. 65] tional railway labor policy expressed in the latter, given effect. We deem the argument based upon the Rail-

[10] The changes here severely reduced the number of employees needed for daily operations, by eliminating what the FEC considered to be unnecessary employees.

job security of the employees of SAL and ACL.[11] In other

[11] In this limited sense, at least, the case is substantially similar to, and probably controlled by, Marine Cooks & Stewards v. Panama Steamship Co., 362 U.S. 365 (1960).

way Labor Act to be without substance. Regarding the argument based upon the Interstate Commerce Act, the short answer is found in *Railroad Telegraphers* v. *Chicago & North Western Ry.*, 362 U.S. 330, 339 at note 15, where the Court cited "cases to show that unlawfulness under nonlabor legislation did not remove the restrictions of the Norris-LaGuardia Act upon the jurisdiction of federal courts." [12]

Since the district court was without jurisdiction to enjoin the picketing involved in this case, the judgment is REVERSED, and the case is REMANDED to the district court with directions to vacate the injunction.

CHOATE, Senior District Judge (Dissenting):

The issue before this court is whether a United States District Court has jurisdiction to enjoin railroad employees engaged in a labor dispute with their employer, which is not a party to this litigation, from interfering with the business and the legal duties[1] of carriers and other persons in the railroad industry with whom those employees have no labor dispute.

[fol. 66] If the use of the court's injunctive powers is not forbidden by the Norris-LaGuardia Act §§4, 13, 47 Stat. 70, 73 (1932), 29 U.S.C. §§104, 113, the court below had jurisdiction to issue an injunction. See 28 U.S.C. §§1331, 1337; *Florida E. C. Ry.* v. *Jacksonville Terminal Co.*, 328 F.2d 720 (5th Cir. 1964); *Lakefront Dock & R.R. Terminal Co.* v. *International Longshoremen's Ass'n*, 333 F.2d 549 (6th

[12] See also Brotherhood of Locomotive Firemen and Enginemen v. Florida East Coast Ry., 346 F. 2d 673, 676-77 (5 Cir., 1965).

[1] Duties concerning car service and interchange of traffic are imposed upon appellees under: the Interstate Commerce Act, 49 U.S.C. §§1, 3 (1952 ed.); Operating and Guaranty Agreement authorized and approved by the Interstate Commerce Commission and by United States District Court for the Southern District of Florida; and the injunction (Case No. 63-16) referred to in the opinion.

(Cir. 1962); *Toledo, P. & W. R.R.* v. *Brotherhood of R.R. Trainmen*, 132 F.2d 265 (7th Cir. 1943). Stated in Norris-LaGuardia terms, the issue is: whether this action is between persons involved in a labor dispute or; whether the subject matter of the litigation involves or grows out of a labor dispute in which appellants and appellees are participating or interested.

I would hold that the court below had jurisdiction to issue the injunction, since there is no labor dispute *between these parties*, nor does the subject matter of this case "involve" or "grow out of" any *labor dispute*.

Substituting the definition of "labor dispute," provided for in §13(c) of the act (29 U.S.C. §113[c]), where appropriate in section 4 (29 U.S.C. §104), the statute provides:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any controversy concerning terms or conditions of employment, or concerning the association, or representation of persons in negotiating [etc.] . . . terms or conditions of employment,[2] regardless of [fol. 67] whether or not the disputants stand in the proximate relation of employer and employee.

There is no controversy or even disagreement between appellees and appellants concerning terms or conditions of employment, or employee representation. No labor demands have been made on appellees, and at no relevant time has there existed any labor dispute of any nature between appellees and the striking-picketing employees of

---

[2] It is instructive to note that the definition of "labor dispute" originally presented to each house included, at the point indicated above, a controversy "concerning employment relations, or any other controversy arising out of the respective interest of employer and employee." That phrase, which might support the finding of a "labor dispute" in the case at bar, was stricken from what became section 13(3). 75 Cong. Rec. 5008 (1932) (Senate); *Id.* at 5488 (House of Representatives).

FEC or their unions, or between the appellees and their employees. The plain meaning of the statute does not give an anti-injunctive shield to one group of railroad employees, who are engaged in an unresolved labor controversy with their employer over terms and conditions of employment, when they unilaterally carry that controversy over to non-involved rail facilities.

The last phrase in the definition of labor dispute in section 13 (c), "regardless of whether or not the disputants stand in the proximate relation of employer or employee," was inserted into the Norris-LaGuardia Act as a direct result of the holding in *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443 (1921), which construed the Clayton Act to withhold protection from labor unions that had no contractual relationship with the employer in question, and which, by their nature, could not be employees. A [fol. 68] primary purpose of Congress in passing the Norris-LaGuardia Act was to broaden the definition of "dispute" so that the labor organization could act for employees by picketing an employer without being subject to injunction. 75 Cong. Rec. 4916 (1932) (remarks of Senator Wagner); *Donnelly Garment Co.* v. *International Ladies' Garment Workers' Union*, 20 F. Supp. 767, 771 (W. D. Mo. 1937). See also 75 Cong. Rec. 5489 (1932) (remarks of Congressman Celler concerning *Dail-Overland Co.* v. *Willys-Overland, Inc.*, 263 Fed. 171, 192 [N.D. Ohio 1920] [wherein strikers were held to be no longer "employees" under the Clayton Act]). It is clear that " . . . the statutory classifications, however broad, of parties and circumstances to which a 'labor dispute' may relate does not expand the application of the Act to include controversies upon which the employer-employee relationship has no bearing." *Columbia River Packers Ass'n* v. *Hinton*, 315 U.S. 143, 146 (1942).

Subsection (a) of section 13 (29 U.S.C. §113[a]) defines the relationships of "persons" who may be parties to a "case" which arises out of a "labor dispute." To take

section 13(a) *alone* as a definition of "case involving or growing out of a labor dispute," without regard to section 13(c) would be a patently incorrect approach to the interpretation of the statute here involved. Such a construction leads to the indefensible result that appellant-brotherhoods can picket and close down any terminal anywhere in the nation through which an FEC car passes. Merely because all parties to this action are either railroad employers or railroad unions and thus admittedly "engaged in the same industry," does not justify the blind conclu- [fol. 69] sion that they are therefore persons involved in a labor dispute or that *any* case to which they are parties grows out of or involves a labor dispute.

> "If any intelligent meaning is to be gathered from section 13, it is necessary that the several provisions of the section be read together, although grammatically its parts are independent. . . . [I]t is clear that the definition of 'labor dispute' given in subdivision (c) must be read into subdivisions (a) and (b). There cannot then be a 'labor dispute' unless there is a controversy between the disputants either 'concerning terms or conditions of employment' or concerning the 'association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment.'" *Donnelly Garment Co.* v. *International Ladies' Garment Workers' Union*, 20 F. Supp. 767, 770 (W.D. Mo. 1937).[2]

---

[2] In *Marine Cooks* v. *Panama S.S. Co.*, 362 U.S. 365, 370, (1960), the court necessarily checked the status of the litigants and found, that the controversy did involve and was between persons who were engaged in the same industry. The court used the precise language of section 13(c) (which sets forth the requisites of "controversy") in direct connection with the precise language of section 13(a) (which defines "case").

Marine Cooks cannot be authority for appellants' contention that a person who is not involved in or interested in the labor dispute is nevertheless barred by Norris-LaGuardia from obtaining an injunction to protect his business. The plaintiffs in *Marine Cooks*

[fol. 70] My brothers on the bench "would have assumed" that secondary boycotts are within the anti-injunction protection of the act, but nevertheless stated that they would examine the question. Propounding the rather uncertain economic self-interest test, they concluded that the test was met from two viewpoints—that of defendant-picketers and that of the "responding employees of the secondary employers." However, it does not appear that appellants in the case have conflicting or competing interests"[4] in any labor dispute.

The court readily appreciates that appellee-railroads and FEC compete against each other in the market for freight and passenger customers. The logical evaluation of that competition, in basic terms of economic self-interests, supports the conclusion that appellees, FEC's competitor railroads, would be benefited if affected at all by appellants' prevailing over FEC. Hardly can appellee-railroads' interest be said to be aligned against its competitor's adversary.

> "And 'persons' must be involved on *both* sides of the case, or the conflicting interests of 'persons' on both sides of the dispute." *United States* v. *United Mine Workers*, 330 U.S. 258, 275 (1947) (Emphasis supplied.)

---

were the very persons who were primarily responsible for setting the wages and working conditions over which the dispute arose. This case goes no further than to hold that there may be a non-enjoinable labor dispute between an employer and a union (not the representative of the employer's employees) which is designed to bring pressure on the employer to change wages and working conditions of his employees. That case does not even relate to a situation wherein a non-disputant is picketed for the purpose of compelling that non-disputant to cease doing business with the employer of the pickets.

[4] Terminal Company is a separately operated Florida corporation, in which FEC is a minority stockholder. With the exception of some very minor passenger ticket service (½ of 1%), all services presently furnished to FEC by the Terminal Company, are mandatory under the Interstate Commerce Act.

The "economic self-interests" of appellee's employees
ot parties to this suit), upon which the court bases one
ol. 71] of its viewpoints, is a finding not supported by the
ecord—a conclusion that FEC operates at lower than
ion standards of employment. It has not been estab-
shed that FEC's employees' working conditions are any
tter or worse than ACL's or SAL's. Can it be said that
ongress intended to change the usual legal definition of
labor case by granting members of a very small union
e right to use coercive methods directly against an in-
cent party who is helpless to give the laborers relief?
ch a construction of the act would bring about inequi-
ble results, and in the absence of clearly compelling
nguage, should not be made. *Gomez* v. *United Office*
orkers, 73 F. Supp. 679, 682 (D.C. Dist. 1947).

It should not be lightly assumed that Congress intended
embrace secondary boycott activity within the jurisdic-
onal limitations of Norris-LaGuardia.[*]

The consistent theme reflected by the history of the act's
assage in both houses is the statement and re-statement
the lawmakers to the effect that the "bill does nothing
ore or less than put into actual effect what the Congress
d years ago when they passed the Clayton Act"; that the
t under consideration was necessary to save the Clayton
t from judicial misconstruction. *E.g.*, 75 Cong. Rec.
79, 5486, 5488, 5490 (1932). "There is not an underlying
inciple written into this bill which Congress did not
act into law back in 1914, when the Clayton Act was
assed." *Id.* at 5478 (remarks of Congressman LaGuar-
a).

ol. 72] In passing the Clayton Act, Congress had no in-
ntion of going so far as to allow the secondary boycott.
ongressman Webb, who conducted the bill through the

[*] The Supreme Court has not ruled on the central issues here
volved. However, in *Bakery Sales Drivers* v. *Wagshal*, 333 U.S.
7 (1947), a secondary boycott was involved and the Court held
at no labor dispute existed.

House, made the following remarks on the question of whether the bill would legalize the secondary boycott:

> "[T]his section was drawn . . . with the careful purpose not to legalize the secondary boycott, and we do not think it does. . . . and it is not intended to do so." 51 Cong. Rec. 9652 (1914).
>
> This section "was drawn carefully, and those who drew this section drew it with the idea of excluding the secondary boycott. It passed the House . . . and the question of the secondary boycott was not raised then, because we understood so clearly it did not refer to or authorize the secondary boycott." *Id.* at 9653.
>
> "I should vote for the amendment offered . . . if I were not perfectly satisfied that it is taken care of in this section [§20]. The language the gentleman reads does not authorize the secondary boycott and he could not torture it into any such meaning. . . . I say again—and I speak for, I believe, practically every member of the Judiciary Committee—that if this section did legalize the secondary boycott, there would not be a man vote for it. It is not the purpose of the committee to authorize it, and I do not think any person in this House wants to do it. We confine the boycotting to the parties to the dispute . . . ." *Id.* at 9658.

[fol. 73] The abuses[6] under the Clayton Act which Congress sought to remedy by Norris-LaGuardia did not involve injunctions in secondary boycott situations especially those which might profoundly affect interstate commerce operations.

A protracted discussion in the House of Representatives centered around the contention that the limitation of in-

---

[6] Those abuses concerned "yellow dog contracts," ex parte injunctions, and sweeping injunctions against unnamed and unknown persons. *E.g.*, 75 Cong. Rec. 5488, 5489, 5491 (1932) (debates in the House of Representatives); 75 Cong. Rec. 4504-4506 (1932) (debates in the Senate).

junctions provision would interfere with transportation in interstate commerce and Mr. LaGuardia's assurances that no such results would follow.[7]

[fol. 74] The extreme and harmful consequences of the construction of Norris-LaGuardia adopted by this court are not to be ignored. In appellant's own words:

> "The unleashing of the parties to engage in economic warfare has serious consequences to third parties to the dispute and to the public . . . . Interference with the mails, with the shipment of perishables and vital materials is the inevitable result when an impasse is reached. It is the aim of the striking organizations (appellants) to cause FEC operations to cease. . . . To accomplish this aim, the organizations have picketed wherever the FEC operates and have requested those persons who perform services for the FEC to cease performing such services." Brief of Appellants, pp. 7-8 (filed May 23, 1966).

---

[7] Question by Mr. Lankford of Virginia: "Does this make it possible for lack of an injunction to tie up railroads and prevent them from transporting milk, for instance?"

Mr. LaGuardia: "[T]he railroad labor act . . . takes care of the whole labor situation pertaining to the railroads. They could not possibly come under this for the reason that we provided the machinery there for settling labor disputes."

Mr. Lankford: "It [Norris-LaGuardia bill] does not apply to the transportation of . . . necessities that go in interstate commerce?"

Mr. LaGuardia: "Interstate traffic is entirely covered in the railroad labor act of 1926." 75 Cong. Rec. 5499 (1932). To the same effect, see pages 5478, 5504.

Other congressmen argued in favor of specifically excluding the anti-injunction provisions "where a labor dispute involves the obstruction of any instrumentality of interstate commerce." *Id.* at 5503. The amendment was rejected and the bill passed after the following remarks by Mr. LaGuardia:

> "[T]he present bill refers only to disputes between employees and employer. The amendment offered . . . brings in the . . . provision for which there is adequate law and which it is not intended to repeal by the provisions of this bill. This is limited to matters between employees and employers." *Ibid.*

Since appellee's yard lies astride of the northeast entrance to the Florida peninsula, manifestly the halting of the Terminal Company operations will: stop daily shipments of great quantities of baggage, express, freight, fresh vegetables, citrus, phosphate rock and other commodities in interstate commerce into and from Florida through Terminal Company facilities; eliminate all carriage and processing of United States mail by rail into the State of Florida, which is estimated to represent approximately 95 per cent of all mail coming into and carried from Florida; blockade ACL and SAL passenger service, consisting of 42 trains per day; block practically all ACL freight service to important seaport docking facilities and to the peninsula as a whole; obstruct freight service to military [fol. 75] installations in Florida, including ACL and SAL traffic destined for the Cape Kennedy complex.

The Norris-LaGuardia Act should not have been interpreted as applicable to the type of situation presented by the instant case.

I would affirm the court below.

[fol. 76]

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 20, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is set for oral argument during the week of October 10, 1966.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas and Mr. Justice Fortas took no part in the consideration or decision of this petition.

[fol. 1]

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE MIDDLE DISTRICT OF FLORIDA,

JACKSONVILLE DIVISION

No. 66-537-Civil-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, JACKSONVILLE TERMINAL COMPANY, a corporation, and SEABOARD AIR LINE RAILROAD COMPANY, a corporation, Plaintiffs,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN and LOWELL KENNEDY, individually and as an official of said Brotherhood; ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, and T. C. BOLAND, individually and as an official of said Order; BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, and J. E. EASON, individually and as an official of said Brotherhood, Defendants.

At Jacksonville, Florida

Before Hon. William A. McRae, Jr., Judge.

Report of Proceedings Upon Application for Temporary Restraining Order—May 4, 1966

[fol. 2]

APPEARANCES

For the Atlantic Coast Line Railroad Company—

Messrs. Rogers, Towers, Bailey, Jones & Gay, Florida Title Building, Jacksonville, Florida, By: Charles D. Towers, Esquire.

For the Seaboard Air Line Railroad Company—

Messrs. Cox, Grissett & Webb, American Heritage Life Building, Jacksonville, Florida, By: W. E. Grissett, Esquire.

For the Jacksonville Terminal Company—

Messrs. McCarthy, Adams & Foote, Atlantic National Bank Building, Jacksonville, Florida, By: A. G. Adams, Esquire.

For Defendants—

Messrs. Rutledge & Milledge, 6th Floor, Flagler Federal Building, 111 N.E. 1st Street, Miami, Florida, By: Neal Rutledge, Esquire and Allan Milledge, Esquire.

. . .

Thomas W. McAliley, Jr. and Alan R. Schwartz.

[fol. 5] The Court: Call the next case.

The Clerk: Case No. 66-537-Civil-J. Atlantic Coast Line Railroad Company, a corporation, et al., versus Brotherhood of Railroad Trainmen, et al.

The Court: Are you ready, for the plaintiffs?

Mr. Towers: Yes, we are.

The Court: Are you ready, for the defendants?

Mr. Rutledge: Yes, we are, Your Honor.

The Court: Gentlemen, I have not had an opportunity to study this Complaint, which was filed just a matter of minutes ago, and I want you to assume that I am not familiar with the contents.

You may proceed, Mr. Towers.

Mr. Towers: Your Honor, let me say this. It has only been off the typewriter a few minutes so we are even, as far as being able to read it and study it thoroughly.

[fol. 6] As Your Honor knows, Mr. Smith, of our office, who has been handling these matters, is on his Naval duty; and I have stepped in here somewhat unknowledgeable this morning; so, if I seem disorganized, it is probably because I am somewhat.

As is set forth in the Complaint, Your Honor, and in the supporting affidavits which have been filed, at 3:00 o'clock this morning pickets went up not only at the Jacksonville Terminal but at various other locations about the City and County, which pickets are of the Unions of the Florida East Coast.

There are some photographs. I think they got into the file, Your Honor. If they did not, they should have.

They are a part of our presentation this morning. Of these pickets, on their stations, at some time after 3:00 a.m. this morning.

We have filed our Complaint here, Your Honor. The plaintiffs are the ACL, the Jacksonville Terminal, and the Seaboard Air Line; and we set forth what has taken place [fol. 7] in the last few hours with respect to this matter.

We have set forth the irreparable damage that we contend is presently being done to us and to the other parties involved.

Other than just to review what is in the Complaint, I think perhaps the best thing would be for me to call to the witness stand one of our witnesses. We would like to supplement some of the material that is in the Court file, if that would be acceptable.

The Court: All right.

Mr. Rutledge: Your Honor, if I may make this interjection here. It may be saving some time.

I don't think there is much factual dispute about what has happened here. It is very possible that we can stipulate as to where these pickets are.

Mr. McAliley is thoroughly familiar with it. Rather than to waste time by taking testimony. There isn't any mystery about it.

The Court: If it can be stipulated, I assume the facts [fol. 8] are not seriously in dispute. If you can stipulate, there might be a saving of time.

Mr. Towers: This particular witness is not going to testify as to the location of the pickets.

His testimony is on the lines of the damage that is being done, and it didn't get included in the papers that were filed, and that is why we would like to call him.

The Court: I will permit you to call him.

Mr. Towers: All right, sir.

Mr. Andrews, will you step up, please, sir?

L. T. Andrews, produced and sworn as a material witness on behalf of the plaintiffs, testified as follows:

Direct examination.

By Mr. Towers:

Q. Would you state your name, please, sir.

A. L. T. Andrews.

Q. And what is your occupation?

A. General Manager, Atlantic Coast Line Railroad Company.

[fol. 9] Q. All right, sir. And would you state just very briefly, for the Court's information, what your duties are in connection with that position, sir?

A. I have jurisdiction over the handling of traffic, freight and passenger, and the operation of all trains.

Q. All right, sir. Now, would you state, sir, what effect, if any, the picket lines around the Jacksonville Terminal are presently having on your trains' service and on the reporting of your employees for their assignments for work?

A. Yes, sir. The picket lines were placed right at the Jacksonville Terminal and other areas in that neighborhood shortly after 3:00 o'clock this morning.

I was called at home shortly after 4:00 o'clock and informed of the matter.

I immediately came on down and rode around the station area in my automobile and I observed the pickets.

We called out some supervisory personnel, because at that time—it was about 4:30 a.m.—our train No. 375,

which was en route from Richmond to Jacksonville, had been stopped at McQuade Street because the crews would not cross the picket line.

We called out some supervisory personnel and sent them out there to pull the train on into the station and we got [fol. 10] it in about 5:20 in the morning. And with the picket lines around the station, our passenger crews will not cross the picket lines to take the trains out; or in coming into the station there are pickets at McQuade Street and Dennis Street, the trains from the Savannah side and the Ocala side come in by McQuade Street and they will not cross the picket line. And, from the Tampa side, by Dennis Street.

So we have had to call in—we have about twelve supervisory personnel at the station to get the trains in and out.

Q. Mr. Andrews, what effect is this having and will this have upon your train schedules and the services you are rendering here?

A. Well, if this situation continues, we will not be able to continue to operate all of the service which we perform today.

In other words, if it lasts—if it is not immediately called off, we will be forced to completely eliminate passenger trains No. 37 and No. 38, which operate between Jacksonville and St. Petersburg; trains No. 191 and No. 192, which operate between Jacksonville and St. Petersburg; trains No. 75 and No. 76, which operate between Jacksonville and Tampa; the East Coast Champion, trains No. 1 and [fol. 11] No. 2, which operate between Jacksonville and Miami; and trains No. 5 and No. 6, which operate between Chicago and Miami.

We just do not have enough supervisory personnel to man those trains and continue the operations.

In addition to the passenger trains we are having to provide supervisory forces to handle the interchange of traffic between the Atlantic Coast Line and Seaboard, and also to handle the freight trains from the Tampa side, to and from the Tampa side, which have to pass Dennis Street.

Q. All right, sir, Mr. Andrews, do these trains carry United States mail?

A. Yes, sir. Some of them do, that we propose to curtail; but some of the ones that we are going to try to continue to operate with supervisory personnel, at least for a limited period, all carry U. S. mail. That would be No. 17 and No. 18, between Chicago and Jacksonville; No. 75 and No. 76, between Richmond and Jacksonville. It originates at New York.

Q. All right, sir. Now, with respect to the freight trains, would you state what you anticipate occurring with respect to those if these pickets continue?

A. Well, right now is about the heaviest shipping season [fol. 12] for perishables in South Florida.

The trains from the Tampa side carry an enormous amount of perishables, northbound; moving it from the farms in South Florida up to the markets in the East and West. And it is very important to the railroads and to the farmers and to the people up the country that this traffic move.

So, for a limited time, we are going to try to run them with supervisory personnel. But we just can't do it continuously, for a long period of time.

Q. All right. Do these same freight trains take materials to the military installations in South Florida?

A. Yes, sir. They bring them to and from the north and south, going to military installations; and interchange with the Florida East Coast and the Seaboard at Jacksonville, and we take them on down the State to military installations on the Coast Line.

Q. Mr. Andrews, to what extent is the Atlantic Coast Line Railroad dependent on the facilities of the Jacksonville Terminal Company and, in particular, the interlocking towers that are located on the terminal facilities?

A. Well, in our freight train operations to and from the Tampa Division—that is, Jacksonville, Sanford, and on [fol. 13] down to Tampa and South Florida points—they are all dependent upon getting through the Beaver Street

interlocking because of the interlocked tracks where we go to and from the Coast Line facilities, through the Terminal Company facilities, on to the Tampa Division.

We have to use the Terminal Company facilities.

For passenger trains we are dependent on the interlockings at all of the Terminal Company interlockings; the one at Lee Street, Beaver Street, and at Myrtle Avenue, to get our passenger trains in and out, and to properly handle them.

Q. Go ahead, I didn't mean to interrupt you.

A. And to properly handle them and switch the passenger trains.

Q. Mr. Andrews, is there any labor dispute between the Atlantic Coast Line and these pickets?

A. Not that I know of.

Q. Mr. Andrews, could you elaborate a little bit on the operation of these towers and to what extent and what the result is—what the effect is—when they become inoperative?

A. Well, unless we can keep the towers manned and in operation, we will have a complete shut-down insofar as the interchange between the Coast Line and the Seaboard; [fol. 14] the Coast Line and the Florida East Coast; and the operation of our trains to and from the Tampa Division. And it would just put us out of business if we didn't have them.

Q. Are there men presently at this time—10 minutes of 12:00—operating these towers?

A. The regular assigned men, the time ran out at 10:00 o'clock; so we had to get some supervisory personnel down there to take over at 10:00 o'clock.

Q. All right, sir. Did you hold the regular men as long as the ICC Regulations permitted?

A. Within the Hours of Service Law. We worked them to the limit of the Hours of Service Law, and the time was up at 10:00 o'clock.

Mr. Towers: I think that is all from this witness, Your Honor.

Cross examination.

By Mr. McAliley:

Q. Mr. Andrews, you mentioned something about the non-existence of a labor dispute. I would like to ask you a few questions in this connection.

Does the Brotherhood of Railroad Trainmen hold a contract on the property of the Atlantic Coast Line Railroad?

[fol. 15] A. Yes.

Q. Does the Order of Railway Conductors and Brakemen hold a contract on the property of the Atlantic Coast Line Railroad?

A. Yes, sir.

Q. Does the Brotherhood of Locomotive Firemen and Enginemen hold a contract on the property of the Atlantic Coast Line Railroad?

A. Yes.

Q. Are the Atlantic Coast Line Railroad and the Florida East Coast Railway connecting carriers?

A. I don't know what you are talking about, a "connecting carrier".

Q. They interchange between one another, do they not?

A. We interchange traffic between one another.

Q. Are you in the same industry, the railroad industry, with the Florida East Coast Railway?

A. We are in the railroad industry.

Q. All right. Now, are you familiar with the fact that there is a major dispute between the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brakemen, and the Brotherhood of Locomotive Firemen and Enginemen, on the property of the FEC?

A. All I know is what I have read in the newspaper.

[fol. 16] Q. What you have read in the newspaper certainly serves to indicate that, does it not?

A. It indicated that, yes.

Q. Now, when you circled the property this morning, Mr. Andrews, and observed the pickets, did you see any violence?

A. I saw no violence.

Q. Did you see any untoward activity on the part of these pickets?

A. No.

Q. Did you see anything that indicated mass picketing by these men?

A. I saw a lot of them. I don't know what we would consider "mass".

Q. Did you completely circle the Terminal Company?

A. No, I didn't completely circle it.

Q. All right, sir. Can you tell the Court approximately how many pickets were on Bay Street down to Myrtle Avenue, covering that entire area?

A. Well, the Terminal Company—I believe there were about four on the entrance to where the passangers go in and out, and the baggage room area.

I went on down farther—let me get these notes here.

[fol. 17] At around Stuart Street, there were two.

At the Mail Shed, there were about four.

At Myrtle Avenue was about two.

Now, that is as far as I can tell you down that way.

Q. All right.

A. And up at Water Street, at the entrance to the Coast Line Commissary, there were two.

Q. Excuse me. Let me stop you right there.

So that the record will be clear: What was the approximate distance between the viaduct where the picketing started, toward Myrtle Avenue?

A. Oh, I would say that the area that I discussed in there was about two or two and a half blocks.

Q. All right. And then you saw pickets at Water Street?

A. At Water Street, where the Coast Line employees report to the Coast Line Commissary.

Q. Also, sir, the Jacksonville Terminal employees that operate that tower report there. Are you familiar with that?

A. I don't know where they report.

Q. All right. Now, where else did you see pickets?

A. I saw pickets going in there where they deliver ice to [fol. 18] the Jacksonville Commissary.

That is on Water Street, right off the Lee Street viaduct.

Q. How many did you see there?

A. One only.

Q. All right, sir. And where else did you see pickets?

A. That is the only area that I covered.

Q. All right, sir. Did you go to McQuade Street?

A. No, sir, but I had a report on pickets there.

Q. All right, sir. Did you go to Dennis Street?

A. No, but I have a report on pickets there.

Q. As a matter of fact, do you know whether there are any pickets at cut the ACL track at Dennis Street?

A. The Superintendent of Terminals at Jacksonville, who reports to me, told me that there were pickets there.

Q. All right, sir. Well, that will be a fact in dispute.

Did you personally go up to Dennis Street?

A. I did not.

Q. Now, are you familiar with the ownership of the Jacksonville Terminal Company?

A. Well, if you mean—

Q. Is it jointly owned between a number of railroads, [fol. 19] including the Florida East Coast Railway and the Atlantic Coast Line Railroad?

A. It is jointly owned.

Q. Is it jointly controlled between a number of railroads, including the Atlantic Coast Line Railroad?

Mr. Towers: Just a moment, if you please.

Your Honor, I would like to interpose an objection. This does not pertain to any of the testimony that was brought out on direct. It is not in cross of anything.

We think it would be improper to allow him to go into it.

The Court: I overrule the objection.

Mr. McAliley: Let me rephrase that and withdraw it.

By Mr. McAliley:

Q. Does the Florida East Coast have control over the operations of the Terminal Company?

A. Well, the Terminal Company is operated directly by the President and General Manager.

Q. All right.

A. The President and General Manager is subject to [fol. 20] reporting to a Board of Directors which is composed of men from all four ownership roads.

Q. All right. And what four roads own the Terminal Company?

A. The Atlantic Coast Line; the Seaboard Air Line; the Southern Railway; and the Florida East Coast.

Q. What percentage of the Terminal Company does the Florida East Coast Railroad own and what percentage of the Terminal Company does the Atlantic Coast Line Railroad own?

A. I do not have those figures readily available.

Q. All right.

A. I just don't remember exactly.

Q. In terms of the actual ownership of them, though, Mr. Andrews, do you know whether the railroads are tenants-in-common over the entire premises of the Terminal Company? That is, each railroad owns a part of every square foot of the Terminal Company?

A. I don't know about that.

Q. All right, sir. Now, did I understand you to say that we were picketing the mails, the United States mails? Or that your trains carry mail?

A. Our trains carry mail and there were pickets at the Mail Shed.

[fol. 21] Q. Sir, were there any pickets by the Federal Building at all—pardon me—by the Post Office Building?

A. At the Jacksonville Terminal Company Mail Shed, where the mail is separated, sorted, and dispatched.

Q. All right, sir. What, as to the building owned by the United States Government? There was no picketing?

A. I didn't see any there.

Q. All right, sir. At McQuade Street, is that a public street, to your knowledge?

A. It is an open street.

Q. All right, sir.

A. For the public.

Q. And on one side of McQuade Street is the property of the Jacksonville Terminal Company and, on the other side, the property of the Atlantic Coast Line Railroad?

A. I am not clear as to just how that property divides out there. I think the Terminal and the Coast Line, and maybe some other railroads, have an interest in it. I don't know exactly.

Q. Would that be the approximate division of ownership point?

A. I don't know.

Q. Does the Florida East Coast Railroad run its trains through the Terminal Company?

[fol. 22] A. Would you explain what you mean by "trains"?

Q. All right, sir. You are the Atlantic Coast Line—with the Atlantic Coast Line Railroad?

A. Yes, sir.

Q. To interchange with your railroad, does the Florida East Coast come in on Track 31 and run into Moncrief Yard and perform interchange on your premises and run back through the premises of the Terminal Company to its own property?

A. With switch engines.

Q. I understand. With Florida East Coast switch engines.

A. That is correct.

Q. And Florida East Coast crews?

A. That's right.

Q. Now, are you familiar with the other service that the Terminal Company performs for the Florida East Coast?

A. I don't think I would be qualified to say what the Terminal Company performs for the Florida East Coast.

Mr. McAliley: Well, that is all we have, Your Honor.

Redirect examination.

By Mr. Towers:

Q. Mr. Andrews, is there any picketing in process where [fol. 23] there are only Coast Line tracks located?

A. I am not quite clear on the ownership out at Dennis Street.

I believe that is Coast Line tracks; I'm not sure.

Q. Coast Line tracks alone?

Mr. McAliley: Excuse me, Your Honor. I specifically asked him about Dennis Street, and Mr. Andrews said he didn't know about Dennis Street.

The Court: The objection is overruled.

He may answer, if he can.

Are there any further questions?

Mr. Towers: Your Honor, I believe that is all we have.

The Court: Are there any further questions of this witness? If not, you may step down, Mr. Andrews.

Do you have further testimony?

Mr. Towers: Yes, your Honor. I would like to call Mr. Marshall Jennette. And, with the Court's permission, if Mr. Adams may examine him. Mr. Adams is attorney for [fol. 24] the Jacksonville Terminal Company.

Marshall C. Jennette, produced and sworn as a material witness on behalf of plaintiffs, testified as follows:

Direct examination.

By Mr. Adams:

Q. Mr. Jennette, in order to save time, you are the President and General Manager of Jacksonville Terminal Company, are you not?

A. Yes, sir.

Q. Did you observe—did you have a chance to observe the pickets at or about the premises of Jacksonville Terminal Company some time this morning?

A. Yes, sir, I have.

Q. Did you make an inspection of the premises to determine the number of the pickets and their locations?

A. Yes, sir.

Q. Did you make any notations of them?

A. Yes, sir.

Q. Would you tell the Court, as best you can, where the pickets are located and the numbers that you observed?

Mr. McAliley: Your Honor, we have here a map that covers the entire premises of the Company, the Jackson-[fol. 25] ville Terminal Company. It may aid the Court; and this witness, being familiar with it, could mark it right on the map.

The Court: All right, what is the position of counsel for the Terminal?

Mr. Adams: We have no objection.

The Witness: Do you want me to mark it in black pencil?

Mr. Adams: Do we have a red marking pencil?

The Clerk: Here is a greased pencil.

Mr. McAliley: First, let's establish for the record that he is familiar with the map and that the map is accurate.

By Mr. Adams:

Q. Look at the map and see.

A. Yes, sir, I am familiar with it, with the map; it was prepared in my office.

Q. Is it an accurate map, in that it accurately portrays the premises of the Jacksonville Terminal Company and [fol. 26] the areas where pickets were located as you observed them?

A. Yes, sir.

Q. All right, would you mark the location, just with a circle or some mark where the pickets are; and at the same time tell the Court, so we can get it in the record.

A. Would you like the number of pickets?

The Court: Mr. Jennette, speak up a little louder so I can hear you.

The Witness: Can I just put a figure 2, and put 2 pickets; and figure 1, for 1 picket?

The Court: That is all right, if that is a legend that is understood.

The Witness: At Davis Street, at the Atlantic Coast Line Commissary, there were 2.

At Water Street, the entrance to our storeroom and icing house, there was 1.

At the entrance to the passenger station, between Lee Street and Stuart Street, there were 4.

[fol. 27] At Stuart Street, there were 2.

At the Mail Shed, which is—Cleveland Street is not shown on here, except by two parallel lines, and the word "Cleveland" has been left off the map, but it would be the west end of the Post Office, is Cleveland Street; and, from Cleveland Street by our Mail Shed, there were 4.

And at Myrtle Avenue, near the Expressway overhead, we have a driveway coming into the Mail Shed and also to our Myrtle Avenue interlocking plant. There were 2 at that location.

At Stockton Street, the Terminal Company does not own the track or right of way at Stockton Street but that is the Seaboard's main line leading to the Terminal Company. But soon after 3:00 o'clock, there were 4 pickets there. And between 5:30 and 6:00 o'clock that was reduced to 3, so I will show 3 pickets at Stockton Street.

Now, by the way, this map does not go all the way up to Stockton Street because of our ownership.

By Mr. Adams:

[fol. 28] Q. Just put it out in the margin. Put 3 out in the margin.

Mr. McAliley: Would you write "Stockton" out beside it?

The Witness: At Beaver Street, there were no pickets there soon after 3:00 o'clock this morning, but between 6:00 o'clock and 5:00 o'clock, there were 2 at Beaver Street.

On Acorn Street, at the entrance to our Repair Yard and right near the corner of Acorn and Beaver, there were 2 there.

And at the driveway entering our Beaver Street interlocking plant, the east end of Beaver Street overpass, there was 1.

And, back under the Beaver Street overpass, within a few feet of our interlocking plant, where the driveway circles and goes under the bridge, there were 2 there.

At Church Street, which is the Seaboard's main line, and our tracks leading into the Express Shed, there were 4.

And at McQuade Street, where the Terminal Company tracks cross McQuade Street, leading to the Coast Line [fol. 29] and to the Southern Railroad, and also to the A&P Warehouse, there were 4 pickets at McQuade Street; and there the right of way is jointly owned. The Coast Line has three tracks crossing McQuade Street, and they own the right of way; and we own the right of way on each side of their right of way. And McQuade Street was opened up by an Easement Agreement with the City wherein the Terminal Company and the Atlantic Coast Line granted the City an easement over this area so that they might pave it and maintain the street.

By Mr. Adams:

Q. How many pickets were there?

A. 4. Give me a minute to find it. It is here. (Indicating)

Q. Are there any on Dennis Street?

A. 2.

Q. There are 2 on Dennis Street?

A. 2 here, and 1 there. Wait. I thought I showed that.

Q. I don't think you mentioned Dennis Street.

A. Maybe I didn't. I thought I did.

At Dennis Street, there were 2 there.

[fol. 30] Q. Did you observe those pickets at Dennis Street?

A. What I did say, they were not there soon after 3:00 o'clock when they were at other places, but between 5:30 and 6:00 o'clock I observed 2 pickets there.

Q. Mr. Jennette, I want to hand you a series of photographs which I numbered A through R and ask you to look at them and see if you can identify them. Just look through them and see if you are familiar with them?

A. I have seen these photographs.

Q. You have seen those photographs?

A. Yes.

Q. Were you present when the photographs were taken?

A. I was.

Q. Are you familiar with the notations at the bottom of the pictures showing where the photographs were taken?

A. Well, to some extent. I am more familiar with the photograph itself, as to where the location is.

I haven't read all the captions.

Q. I see. Well, do those photographs accurately portray the pictures of the pickets that you have described and indicated on this map?

A. Yes. At between 5:30 and 6:00 o'clock, 6:00 a.m. this morning; yes.

Q. All right. If you will take a moment and compare the [fol. 31] picture with the caption so that we will make sure they are correct.

Mr. Adams: At this time, do you agree that we may introduce these into evidence?

Mr. McAliley: We are agreeable.

The Court: Without objection, they will be received in evidence.

Thereupon, the instruments above referenced were received and filed in evidence as Plaintiffs' Exhibit No. 1.

The Witness: Photograph "O" could be further identified as having been taken at Bay Street at the Mail Shed.

Mr. Adams: Would you so indicate on there with this pen, please, by your initials?

(There was a pause while the witness complied with the request of counsel.)

The Witness: They are all correct.

By Mr. Adams:

[fol. 32] Q. You have examined all these photographs, have you?

A. Yes.

Q. Do you find that the captions on the photographs agree with the photographs themselves?

A. I do.

Q. All right, sir. Now, Mr. Jennette, would you please describe to the Court the effect that these pickets have had on the operations of the Jacksonville Terminal?

A. Well, they have prevented several hundred employees from reporting to work this morning; and we are finding it difficult to carry on the business in the usual manner at the Terminal Company.

We are experiencing serious delay of trains, and are not able to load all the mail that is supposed to be loaded on these trains before they depart.

Q. What mail service does the Jacksonville Terminal Company provide?

A. The Jacksonville Terminal Company unloads all of the mail brought in or taken out by the railroad, and they perform this service for the Railroad Company—or the Post Office, depending upon the contractual obligation. And I would say that over 90% of the mail entering and leaving Jacksonville must be handled by the Terminal Company.

[fol. 33] Q. This is either entering or leaving Jacksonville?

A. Yes.

Q. And what has been the effect on the handling of the mail?

A. Well, we have a few people that we have transferred from other departments to unload mail, but they are not regularly assigned to that service and they are not familiar with how to separate it and send it on the proper trains or trucks, whichever the case may be.

I would give a short answer by saying that the mail is bogging down in Jacksonville right now.

Q. How long can you continue to operate or service mail, even partially, under these conditions?

A. Well, we are going to continue just as long as it is possible but it is getting worse as each hour goes by; and the Post Office is breathing down our back as to what we are going to do about it, and there is not a lot that we can do about it until we can get these employees back to work.

Q. Let me ask you this question. Perhaps I can shorten it. Your employees, who handle mail, are they crossing the picket line?

A. They are not.

Q. All right. Unless you get people to come in and do [fol. 34] that work, how long can you continue to handle mail without additional help?

A. Well, we are not handling it all today and I don't see how we can think about going into tomorrow with the mail left over from today.

Q. All right, Mr. Jennette, how many passenger trains daily are handled or serviced by the Jacksonville Terminal Company, if you know?

A. There has been a recent change.

Twenty-two trains a day in, and twenty-two trains a day out. That is each 24 hours, at this time.

Q. All right. Will you be able to continue to service these trains if the picket lines stay up?

A. No.

Q. I'm sorry, I didn't hear your answer.

A. We can only service them to a minor extent.

We cannot give them the service that is expected of us or that the trains require.

Q. Will the lack of service have any effect on the safety of the handling or the safety of the men involved?

A. Well, we are having to do work with inexperienced people who are not accustomed to performing these services, and any duty that is performed by a person who is not skilled and experienced with it represents an element of [fol. 35] hazard.

Q. Are these passenger trains—the twenty-two that come in and the twenty-two that go out—how many of these are Florida East Coast passenger trains?

A. There are two trains—one in and one out daily, except Sunday.

Q. All right, Mr. Jennette, what part do the various interlocking towers, that you heard Mr. Andrews refer to—what part do they play in the servicing of the other railroads?

A. Well, the interlocking towers are to speed up switching, because over a third of our switches are thrown remotely by these three towers for the switching of trains, and once they are connected to a tower they cannot be operated by hand.

They can only be changed by the mechanism in the interlocking tower being reversed or changed.

Q. Can the train movements move through the yards unless the switches are properly thrown?

A. No, they cannot. And, in addition to the movement of the switches, why the signals are set up and trained to operate on a signal indication in the yard.

Q. Are there any ICC Regulations that you know of which restrict the length of time a person operating this [fol. 36] tower can work?

A. Well, we work them normally eight hours.

We can work them one additional hour without reporting it to the Commission; but, in case of emergency, we can work twelve hours, but it must be reported to the In-

terstate Commerce Commission and explained as to why an employee was used beyond the ninth hour.

Q. Do you have any regular employees working those towers at this time?

A. No, sir. Not since 10:00 a.m. this morning.

Q. Who is operating the towers now?

A. We have supervisory personnel from the Terminal Company and the tenant line railroads.

Q. Does the Terminal Company—in addition to its services to the operating railroads, does it serve any industries for the switching of railroad cars?

A. Yes, we serve in the neighborhood of twenty industries adjacent and adjoining Terminal properties.

Q. What effect have the picket lines had on the servicing of these various industries?

A. We have had to shut down the switching of all industries in order to handle the passenger trains and attempt to handle the mail.

Q. All right, Mr. Jennette, I am sure you are aware of [fol. 37] the labor dispute that the Florida East Coast has been engaged in with the various members of its labor organizations.

What provisions has the Terminal Company made in order that the striking Unions can reach the Florida East Coast employees without picketing the entire Terminal Company?

A. We have designated two entrances to the Terminal Company; one for the Florida East Coast employees, which is at Stuart Street; and another entrance at Johnson and Bay, for all other railroad employees.

Mr. Adams: Your Honor, if I may point out at this time, I believe one of the photographs shows a picture of the sign which indicates the entrance which has been established.

Mr. Rutledge: Your Honor, we have not been served with any copies of these photographs. I have no idea what they are talking about.

The Court: Display them from the Court file, Mr. Adams.

Mr. Adams: Yes, sir. I thought Mr. McAliley had seen [fol. 38] them.

Mr. McAliley: Your Honor, we have no objection to the photographs. I think they have been amply identified by the witness and I have no objection to their introduction.

We have not received copies of these affidavits either. I would like to have an opportunity to review them.

Your Honor, we will stipulate that the sign shown in Photograph "K" was a sign erected on the premises of the Terminal Company at Stuart Street, and the language is apparent on the sign.

The Court: All right, the stipulation will be received.

By Mr. Adams:

Q. Mr. Jennette, when was this entrance for the Florida East Coast employees so designated?

When was that sign put up?

A. It was either late in January, 1963, or early in February, 1963; and I would have to refer to my file to know the date that it was put up.

Q. Did the non-operating Unions, which were on strike [fol. 39] with the Florida East Coast during that time, picket that gate?

A. They did, yes.

Q. Did that have any substantial effect on the operations of the Jacksonville Terminal Company?

A. It did not affect the operations of the Jacksonville Terminal Company.

Q. Has that gate, so far as you know, been used by Florida East Coast employees?

A. Well, that, I don't know, because I have not observed, since they started passenger train operations, whether those employees are using that gate or not.

Q. I see. But the gate has been there for that use and has been so designated; is that correct?

A. Yes.

Q. Mr. Jennette, are you familiar with the stock ownership or the ownership of the Jacksonville Terminal Company by the other railroads?

A. Yes, I am.

Q. Could you explain what that ownership is?

Is it a stock ownership or is it a physical control ownership?

A. It is a stock ownership, a non-profit corporation. The stock is owned equally by the four railroads.

[fol. 40] Q. Mr. Jennette, I ask you is the Jacksonville Terminal Company presently engaged in a labor dispute with any of the three organizations, the names of which escape me.

Mr. Rutledge: The Trainmen, Conductors and Firemen.

Mr. Adams: That are named in the Complaint.

Mr. McAliley: We would object to that as calling for a legal conclusion.

The Court: The objection is overruled.

By Mr. Adams:

Q. Mr. Jennette, is the Jacksonville Terminal Company presently engaged in a labor dispute, so far as you know, with the Brotherhood of Railroad Trainmen?

A. Not that I know of.

Mr. McAliley: We would register the same objection to each of these questions, Your Honor.

The Court: The objection is overruled.

By Mr. Adams:

[fol. 41] Q. Is the Jacksonville Terminal Company presently engaged in a labor dispute with the Order of Railway Conductors and Brakemen?

A. Not that I know of.

Q. Is the Jacksonville Terminal Company engaged in a labor dispute with the Brotherhood of Locomotive Firemen and Enginemen, so far as you know?

A. That craft is not represented in the Terminal Company, so therefore it would not be.

Q. You say that craft does not represent any of your employees?

A. That's right.

Mr. Adams: Your Honor, I want to show this map to Mr. Jennette again.

By Mr. Adams:

Q. Mr. Jennette, we were talking about Stockton Street a moment ago and I note that Stockton Street does appear down here at the lower left-hand corner of the map.

Is that where the crossing is? Or is the crossing up here?

A. No.

(The witness marked the subject map with a red pencil.)

Q. That is 3 pickets, down here?

[fol. 42] A. Yes.

Mr. Adams: Thank you.

Cross examination.

By Mr. McAliley:

Q. Mr. Jennette, will you examine the photograph that reflects the picket sign. Is Brotherhood of Locomotive Firemen and Enginemen or the BLF&E reflected on that picket sign at all?

A. No, sir.

Q. What labor organization is reflected on that picket sign?

A. The BRT.

Q. Do you know if any member of the Brotherhood of Locomotive Firemen and Enginemen is actually engaged in the picketing of the Terminal Company?

A. No, I do not know it.

Q. All right, sir. Do you have any other information in this regard at all?

A. No.

Q. Do you know that any member of the Order of Railway Conductors and Brakemen is actually picketing the Terminal?

A. Not that I know of.

[fol. 43] Q. Insofar as the Brotherhood of Railroad Trainmen is concerned, they do represent employees of the Terminal Company?

A. Yes.

Q. On what class or craft of employees do they hold a working agreement or labor contract on your property?

A. Well, I think it is the trainmen.

I am not sure of that without checking the files in the office.

Q. All right. But at least it would be the switchmen and trainmen and brakemen on the property?

A. Yes, sir.

Q. Is that correct?

A. Yes.

Q. Now, as to the ownership of the Jacksonville Terminal Company, you say that the stock is owned equally by the four railroads?

A. They own an equal number of shares, but I can't tell you the number of shares without referring, again, to the file.

Q. The four of them would be the Florida East Coast Railroad, the Atlantic Coast Line Railroad, the Seaboard Air Line Railroad, and the Southern Railroad?

A. That's right.

[fol. 44] Q. Insofar as the control—as opposed to the ownership of the Terminal Company—again, is control exercised by each of the four railroads?

A. Under an Operating Agreement.

Q. Yes, sir. But control, for example, is exercised by the Florida East Coast Railroad as well as the other railroads?

Mr. Adams: Your Honor, I object to that unless he specifies what kind of control he is talking about.

Does he mean the management policies as set forth? Or is he talking about the day-to-day physical operation of the railroads?

The Court: I sustain the objection. Make it more explicit.

Mr. McAliley: All right, sir.

By Mr. McAliley:

Q. Does the Florida East Coast Railroad exercise any control insofar as the policy decisions are concerned in the operation of the Terminal Company?

A. No, sir.

[fol. 45] Mr. Adams: Your Honor, I think the best evidence of that would be the Operating Agreement itself, which Your Honor is eminently familiar with.

The Court: It is not on this record. Of course, I am familiar with it.

Mr. Adams: I think the best evidence would be the Operating Agreement, as to what control.

The Court: I will overrule the objection, if it is an objection.

Mr. Adams: Yes, sir, it is an objection.

The Court: Proceed.

Mr. McAliley: Would you read back the question?

The Reporter: "Does the Florida East Coast Railroad exercise any control insofar as the policy decisions are concerned in the operation of the Terminal Company?

[fol. 46] "Answer: No, sir.

Mr. McAliley: At this time we ask the Court to take judicial notice of this contract, which is entered in evidence in another case.

The Court: What is the position of counsel as to the Operating Agreement?

The Clerk: That is Case No. 63-16.

BLEED THROUGH POOR COPY

Mr. Towers: Your Honor, I don't think it is material and relevant to the issues in this case whatsoever. As a matter of fact, I apologize for burdening the Court as much as we have.

Everything is in this file, which I know Your Honor has not had a chance to look at; but I believe just what is in this file, without what we have supplemented it with, is sufficient to sustain a temporary restraining order that we request.

The Court: Mr. McAliley, what is the reason for going into this? I am, of course, familiar with the contract [fol. 47] rather fully.

Mr. McAliley: I know, Your Honor.

The Court: But that doesn't make it a part of this record.

What is the purpose of going into this?

Mr. Rutledge: Your Honor, may I answer that question?

The Court: Yes.

Mr. Rutledge: Presumably, the plaintiffs here are seeking some sort of injunction or restraining order against the picketing which is being described from the witness stand.

The extent of the ownership and control of the FEC over the Terminal Company bears directly on the legality of the picketing that is in question here and therefore goes precisely to the point before Your Honor; namely, whether this is lawful picketing; putting to one side the jurisdiction of the Court.

[fol. 48] The Court: Do you have a copy of that Operating Agreement?

Mr. Adams: We don't have it available.

Mr. Towers: We don't either.

Mr. Rutledge: Your Honor, may I make this suggestion. The defendants here were not parties to either Case No. 63-16 or to the other case entitled FEC vs. Jacksonville Terminal Company, involving the Operating Agreement, but we would respectfully ask, since all the plaintiffs were parties to those suits, both of those suits—we would ask

the Court to take judicial notice of the documentary evidence in those two suits, which we think does bear directly on this.

The Court: Actually and specifically, you just want me to take judicial notice of the Operating Agreement. That is what you have before me?

Mr. Rutledge: Yes.

[fol. 49] The Court: Do you object to that as a technique apart from your objection as to relevancy?

Mr. Towers: Well, as far as technique, Your Honor, we are in this position. The point has been made that we have not furnished them with copies, and this sort of thing.

These fellows were in town all day yesterday. They knew this strike was going to start. We didn't have any formal notice until 3:00 o'clock this morning, and we have really been hustling.

As far as technique is concerned, I just think we are getting far afield from what is facing us.

The Court: It may be that we well are.

You are not objecting to what seems relevant to me in the Operating Agreement in the other file, which I have before me, File No. 63-16-Civil-J? You have no objection to my referring to that if I consider it necessary?

Mr. Towers: No, sir. Other than my other objection.

[fol. 50] The Court: All right.

Mr. Towers: That I don't consider it material or relevant in this case.

The Court: If it seems relevant to me, I will have a look at it from the other file.

Continue, Mr. McAliley.

Mr. McAliley: Thank you, Your Honor.

By Mr. McAliley:

Q. Now, as to this gate and the sign erected near Stuart Street, have you yourself ever seen a Florida East Coast Railway employee use that entrance?

A. No, sir.

Q. Do you know for a fact, sir, that employees of the Florida East Coast Railway use the other entrances?

A. No, I don't know that either.

Q. All right, sir. How do they get in there?

A. Well, as indicated in these pictures, there are many ways that you can enter the Terminal Company.

Q. Now, with reference to the sign near the Stuart Street entrance, you say that was put up in connection with a [fol. 51] non-operating Union?

A. Yes.

Q. Does it have anything to do with the Brotherhood of Railroad Trainmen?

A. No, sir.

Q. Sir?

A. No, sir.

Q. Now, the ICC requirements and the Hours of Service Law are nine hours for an operator, a tower operator, aren't they?

A. Well, nine without reporting it, yes.

Q. As to safety, has anyone been hurt or injured at the Terminal Company since 3:00 o'clock this morning?

A. I have no record of it.

Q. All right, sir. Referring to Plaintiffs' Exhibit No. 1, in evidence, which is the map of your premises, and referring to Stockton Street, which a point has been made of; who did you say owned the property adjacent to Stockton Street?

A. The Seaboard.

Q. All right, sir. Now, looking from your left to your right on this map as it is facing directly toward you, what yards are closest to the track that crosses Stockton Street?

A. Honeymoon Yard and YH Yard.

[fol. 52] Q. All right, sir. Could you mark an "H" for Honeymoon Yard and a "YH" for the YH Yard.

(There was a pause while the witness complied with the request of counsel.)

Q. All right, sir. Now, in Honeymoon Yard and YH Yard, is this the location where the interchange takes place

between the Florida East Coast Railroad and the Seaboard Railroad?

A. That is correct.

Q. Yes, sir. And is Stockton Street the closest point to that interchange that a person can get to without trespassing on private property?

A. That is true.

Q. Now, some general questions about the picketing, sir. Was there any violence?

A. No, sir.

Q. Was there any mass picketing or large group of pickets?

A. Well, on the property, I think a total of about 32 or 33 pickets.

Mr. Adams: Your Honor, I will object to the question as calling for a conclusion. Mr. Jennette has testified in [fol. 53] detail as to the number of pickets and their locations, and I think, other than that, it calls for a conclusion as to whether that constitutes "mass picketing", or not.

The Court: I overrule the objection.

By Mr. McAliley:

Q. Mr. Jennette, you say the picketing surrounds the Terminal?

A. As far as public streets and physical properties can be. There is a creek known as McCoy's Creek that furnishes, you might say, a barrier to the south side of the Terminal yard almost.

Q. But, other than McCoy's Creek, the picketing encompasses the Terminal Company, as you specified?

A. Yes.

Q. All right, sir. And what generally is the area of the Terminal Company?

A. The St. Johns River to—

Q. In terms roughly of miles?

A. Oh, it is roughly a mile and a quarter long and probably a quarter of a mile, between a quarter and a half mile wide.

Q. And that area is covered by 32 pickets?
fol. 54] A. Yes, sir.
Q. All right. I will go down this quickly.
At Davis Street there and at Water Street, is that the
rea where your towermen enter?
A. That is where the towermen enter for Lee Street, yes,
r.
Q. And of course at the passenger station, at Lee and
tuart Streets, is this an area where employees enter?
A. Employees, yes.

Mr. Adams: Employees of whom?
I object, unless it is specified.

By Mr. McAliley:

Q. Employees of Jacksonville Terminal?
A. Yes.
Q. At Stuart Street, is this an area where employees of
acksonville Terminal Company enter?
A. Yes.
Q. At the Mail Shed, is this an area where employees
Jacksonville Terminal Company enter?
A. Yes.
Q. Is the Mail Shed owned by the Jacksonville Terminal
ompany or the United States Government?
fol. 55] A. It is owned by the Terminal Company.
Q. All right, sir. At Myrtle Avenue, is that an area
here employees enter?
A. Yes.
Q. And at Stockton Street, sir?

Mr. Adams: Again, this is employees of the Terminal
ompany?
Mr. McAliley: Yes.

By Mr. McAliley:

Q. At Beaver Street, is that an area where employees
the Terminal Company enter?
A. Yes.

Q. And Acorn Street, is that an area where employees of the Terminal Company enter?

A. Yes.

Q. All right, sir. The Beaver Street interlocking plant, of course, is the area where your tower operator enters?

A. Yes.

Q. All right, sir. And, under the Beaver Street viaduct, is that an area where some of your Jacksonville Terminal Company employees enter?

[fol. 56] A. Yes.

Q. All right. And how about Church Street?

A. Quite often trainmen report there to go to work on a switch engine in changing crews. They change quite often at Church Street.

Q. All right, sir. And turning to McQuade Street, is it your testimony that there is Terminal Company property on each side of the ACL Railway?

A. At McQuade Street?

Q. Yes, sir.

A. Yes.

Q. And where is the interchange between the Florida East Coast Railroad and the Atlantic Coast Line—where does that take place?

A. It would be kind of northwest of McQuade Street, in what is known as Moncrief Yard.

Q. And McQuade Street represents the point between the premises of the Terminal Company and the premises of the Atlantic Coast Line Railroad?

A. Generally speaking, yes.

Q. Well, there is no other public street anywhere near or around McQuade Street where you can reach that point, is there?

A. That is correct.

[fol. 57] Q. Without going on someone's private property?

A. Correct.

Q. What other railroads are providing the supervisors for your interlocking towers?

A. All three railroads.

Q. Does that include the Florida East Coast Railroad?

A. Yes.

Q. Florida East Coast supervisors are now working in the Terminal Company in these towers?

A. Yes.

Mr. Adams: I'm sorry. Would you read back that last question and answer?

The Reporter:

"Q. Florida East Coast supervisors are now working in the Terminal Company in these towers?

"A. Yes."

The Witness: Southern Railroad's are not. I would like to make that clear.

The three other railroads' are; but the Southern Railroad's are not.

[fol. 58] By Mr. McAliley:

Q. One of the three includes the Florida East Coast?

A. Yes.

Q. All right, sir. What services are performed by the Jacksonville Terminal Company for the Florida East Coast Railroad?

A. We service their passenger equipment, their passenger engines, in and out; as well as their coaches. For car cleaning, ice, and water. And any Terminal expense in the way of air-conditioning or repairs that might be needed.

Q. All right, sir. In the operation of the Terminal Company, insofar as furnishing services to the Florida East Coast, is an integral part of the operation of the Florida East Coast Railroad?

Mr. Adams: Your Honor, that calls for a conclusion as to what the Florida East Coast considers an integral part of the operations.

The Court: I will let the witness answer, if he can. I will overrule the objection.

The Witness: It is necessary to operate from the pas-
[fol. 59] senger station down the St. Johns River where they get on their own track.

By Mr. McAliley:

Q. All right, sir. It is also necessary in terms of interchanging with freight, to use the Terminal Company; is it not?

A. Oh, yes. They use Terminal Company tracks altogether to interchange freight with the three other railroads.

Q. And this is done on a day-to-day, week-to-week, and month-to-month basis?

A. Yes.

Q. The interchange of freight?

A. Yes.

Q. On your property?

A. Yes.

Q. With your assistance?

A. With our employees, yes, sir.

Q. And with your facilities?

A. Yes.

Q. Now, does the Florida East Coast Railroad routinely operate through your premises?

A. Oh, yes.

Q. On a day-to-day basis?

[fol. 60] A. Yes.

Q. And move their engines and their personnel through and around your premises?

A. That's right.

Q. And interchange freight on your premises?

A. That's right?

Q. And handle cars and equipment on your premises?

A. That's right.

Q. Yes, sir. And you provide them services on your premises in connection with their one passenger train?

A. That's right.

Q. In the performing of interchange service by the FEC, is it necessary for you to throw switches for them?

A. It is, yes.

Q. Yes, sir. And, for example, when they come in, I believe it is on Track No. 31; is that correct?

A. Generally speaking, No. 31. Sometimes they use Track No. 60.

Q. All right, sir. But, coming off of the St. Johns bridge on to Track 31, for example, you have a tower that has to operate the switches for them?

A. That's right.

Q. And what tower is that?

[fol. 61] A. The first one they get to is Lee Street.

Q. And Lee Street is manned by employees of Jacksonville Terminal Company?

A. That's right.

Q. All right. I will run through these services briefly. Do you provide car inspection service to the FEC?

A. On passenger trains only.

Q. Car repair service for the FEC?

A. Passenger trains only.

Q. Of course the passengers board the Florida East Coast trains on the premises of the Jacksonville Terminal?

A. Yes, that's right.

Q. Oh, one question about Dennis Street. Now, so that the record can be very clear, where is Dennis Street on the map?

A. (Indicating)

Q. All right, sir. Now, adjacent or beside Dennis Street here is a dirt road that is an entrance into your premises?

A. There is a driveway that leads between some leased property and our material yard where we have cross and

switch ties stored, and this driveway is also used by a [fol. 62] tenant of ours who is in the paving business and has lime rock and equipment stored east of that driveway.

Q. And the employees sometimes go to work through that driveway?

A. They don't report to work there, but they have to go in and out of there to get material.

Q. This morning, sir, did you or any of your supervisors call employees and instruct them to come in through that driveway near Dennis Street?

A. Not to my knowledge.

Q. All right, sir. Now, did you ever see any picket at Dennis Street walking across the railroad track, sir? Or were they located on that driveway?

A. At the time I saw them, they were located on the driveway.

Q. Do you know of your own knowledge, sir, whether Train Master Vlasin, of the Florida East Coast Railroad, and another Florida East Coast Railroad employee, today used this very dirt road near Dennis Street?

Mr. Adams: I object to the question, unless it is first shown that he knows who they are.

The Court: Do you know those individuals named?

[fol. 63] The Witness: I know Vlasin.

Mr. McAliley: Yes, sir.

The Witness: In fact, I talked with him on the 'phone this morning.

By Mr. McAliley:

Q. All right, sir. And do you know whether or not they used this particular street?

A. I do not.

Mr. McAliley: That is all we have, Your Honor.

The Court: Is there any further direct?

Mr. Adams: Just a couple of questions, Your Honor.

Redirect examination.

By Mr. Adams:

Q. Mr. Jennette, to your knowledge, did any of the FEC
pervisory personnel, or other employees, work in the
erlocking towers prior to the strike?
A. No, they have not, to my knowledge.
Q. Prior to the pickets appearing on the Terminal
l. 64] Company?
A. Not to my knowledge.
Q. Did any of them work in the tower prior to the time
vas necessary to let the regular employees go?
A. They did not.
Q. Mr. Jennette, has there been any problem about get-
g the taxicabs to come on or off the premises of the
cksonville Terminal Company for the purpose of servic-
the passengers or people in the station?
A. The taxicabs have stopped coming into our parking
a where they can discharge and pick up passengers.
Q. And, as a result, what do the people desiring taxicabs
ve to do?
A. Well, they are deprived of that service, or either
y have got to go out and find it.
They are not even parked within that area.

Mr. Adams: That is all we have.
Mr. Towers: Your Honor, because of the emergency
ure of this thing and the effect it is having on the com-
nity, I am inclined to cut even the presentation of our
i case short.
l. 65] The Court: I want to have you make it com-
e. It is a matter of your discretion as to how far you

am not going to take a recess for awhile. I would like
ave you press along with what you have.
Mr. Towers: All right, sir.
ould we have a conference for just a minute or two?

The Court: A conference between counsel?
Mr. Towers: Between the attorneys, yes.
The Court: Well, the Court will be in recess for about ten minutes.

. . . Upon the resumption of the hearing after the recess above indicated, the following further proceedings were had:

Mr. Adams: Your Honor, I have one more question to ask Mr. Jennette.
The Court: All right.

[fol. 66] By Mr. Adams:

Q. Mr. Jennette, does the contract that the Jacksonville Terminal Company has with its employees include in it any employees of the Florida East Coast?
A. Oh, no. Only the Terminal Company employees.

Mr. Adams: That's all.

Recross examination.

By Mr. McAliley:

Q. The Terminal Company Labor Agreements and those of the Florida East Coast, sir, are Labor Agreements with the same Unions that are involved; specifically, the BRT and the ORC&B?

Mr. Adams: Your Honor, I am not sure I understood that question.
The Court: I didn't understand that either.
Mr. McAliley: Yes, sir.

By Mr. McAliley:

Q. Do you have a Labor Agreement with the BRT?
A. Yes.
Q. And do you have one with the ORC&B?
[fol. 67] A. The Order of—

Q. Order of Railway Conductors and Brakemen?

A. I don't believe we do.

Q. But you do have one with the Brotherhood of Railroad Trainmen?

A. I'm pretty sure that's right. On these matters, I would rather refer to our records in the office because I have other people who handle personnel matters.

Q. May I clear up one other matter with you, sir?

Is there any question that you, as head of the Terminal Company, have to go to your Board of Directors for prior to making a move?

Mr. Adams: I object to that as being vague and indefinite. What kind of "move"?

The Court: Make it more explicit.

Mr. McAliley: Yes, Your Honor.

By Mr. McAliley:

Q. In the operation of the Terminal Company, for what matters do you have to secure prior approval of the Board of Directors?

A. Under the By-Laws, I have to get authority from [fol. 68] the Board of Directors to make a capital expenditure or pay a judgment or a personal injury claim in excess of $5,000.00, or any operating expenses that are termed "extraordinary".

Q. And what does "extraordinary" mean, under the By-Laws?

A. I don't know.

Mr. McAliley: That is all we have, Your Honor.

Mr. Adams: That is all we have.

The Court: You may step down, Mr. Jennette.

COLLOQUY BETWEEN COURT AND COUNSEL

Do you have further testimony?

Mr. Towers: Your Honor, this completes the presentation of our case.

We feel that the Complaint and the supporting affidavits and exhibits and testimony that have been adduced before Your Honor here entitle us to a temporary restraining order.

The Court: All right. Do you have testimony or evidence on behalf of the defendants?

[fol. 69] Mr. Rutledge: Your Honor, we have no testimony. We would like to object to the affidavits.

We have a hearing here in which witnesses can be presented subject to cross-examination.

And we do have motions at this time that we would like to make.

The Court: Well, I will overrule the objection, insofar as the tendered affidavits are concerned.

Mr. McAliley: Your Honor, to make the record clear, could we also state as a ground some of the information in there that has been contradicted by the testimony; and most of it is not based on any facts shown to be within the witness' knowledge.

The Court: Well, I am aware of what the testimony was and I will have to have a look at the affidavits before a decision is made.

You have no testimony and no evidence to present of any kind? Am I correct in that?

[fol. 70] Mr. Rutledge: Yes, that is correct, Your Honor.

The Court: All right. And I believe you said you had certain motions.

Motion to Dismiss for Lack of Jurisdiction

Mr. Rutledge: Your Honor, at this time we would like to move to dismiss this case for lack of jurisdiction.

As this is an argument that would go to the merits, shall we present our final summation at this time?

The Court: I want to hear your arguments on jurisdiction. That is one of the things I am interested in.

Mr. Rutledge: Thank you, Your Honor.

The Court: Now, the order of the arguments, I think we ought to get that settled at this time.

It is your Motion to Dismiss and I assume, therefore, that you are prepared to go forward with your argument?

Mr. Rutledge: We are, Your Honor.

• • • • • • •

[fol. 71]

EXCERPTS FROM ARGUMENT OF MR. RUTLEDGE

Mr. Rutledge: May it please the Court, this argument is in support of the Motion to Dismiss the Complaint for lack of jurisdiction made ore tenus at this time, and also in opposition to the Application for Injunctive Relief made by the plaintiffs.

• • • • • • •

[fol. 85] Now, there is a recent decision of the United States Court of Appeals for the Fifth Circuit in a case arising also out of this FEC—excuse me, Your Honor—did I say Fifth Circuit?

I mean the Court of Appeals for the District of Columbia. Also arising out of the FEC situation.

The style of the case is *International Brotherhood of Electrical Workers* v. *NLRB*, 350 Federal (2nd) 791.

The statement is made there in that case, flatly, that the Railway Labor Act does not ban secondary picketing.

Now, that was a case where certain of the nonops were subject to restraint by the National Labor Relations Board [fol. 86] involving certain picketing down around Cape Kennedy.

And we submit that if there is any claim that this picketing is illegal because it is too broad in some way or affects neutral employees, or something of that sort, the plaintiffs here are relegated by law to the exclusive primary jurisdiction of the National Labor Relations Board and should follow the same procedure outlined in that case.

In other words, if there is a claim that there is a violation here in the sense that the picketing was a secondary picketing, we don't think that the facts show that or that they have proved it; but, if that is the claim, then the exclusive primary jurisdiction is with the National Labor

Relations Board and this case shows that a remedy is available to them by that procedure; so that is the course that they should follow.

Finally, Your Honor, and just in summary, we say, first of all, that the Norris-LaGuardia Act, particularly Section 4, as applied to a factually very similar situation by the [fol. 87] Fifth Circuit very recently in the *Brotherhood of Locomotive Firemen* case v. *Florida East Coast Railroad* —that that case shows that Norris-LaGuardia is a jurisdictional bar to the type of relief sought here.

And, secondly, we say that even if you put the jurisdictional bar to one side and go to the merits of this case, that the picketing done here is lawful picketing and has not been prohibited by Congress in any way.

It is picketing which is addressed to putting economic pressure on the Florida East Coast by putting economic pressure on this adjunct of the Florida East Coast which is engaged in day-to-day operations as an integral part of it.

We have shown by testimony that they have serviced cars for the FEC.

Passengers and customers come upon the premises here.

They run their trains over their tracks.

Their operations are meshed; just as the witness, who was Manager for the Atlantic Coast Line Railroad, came in and said. That the "Terminal Company is intricately [fol. 88] involved in our day-to-day operations."

And so too the testimony shows that it is just as intricately involved in the FEC's operations.

The Court: Your argument is that you have a legitimate reason to picket the Terminal and, having that, the fact that there has been testimony that the Coast Line and the Seaboard are suffering damages is just an unfortunate result of the legal picketing.

Mr. Rutledge: That is correct, Your Honor. We think there is no question, Your Honor, that picketing has economic effects, unhappily, that affect people who are not primarily involved. This is a by-product of even the most

limited kind of economic pressure. But it is the alternative that Congress has elected to compulsory arbitration.

Now, I would like to point out that this dispute that this picketing arises out of is one that we have agreed to arbitrate voluntarily and which the Carrier has refused to [fol. 89] arbitrate, as requested both by the Mediation Board and the Secretary of Labor.

• • • • • • •

[fol. 94] COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Mr. Towers, on the question of the parties here, do you have any comment, after having heard the representations of counsel for defendants, as to the Order of Railway Conductors and Brakemen and the Brotherhood of Locomotive Firemen and Enginemen?

Mr. Towers: Yes, Your Honor, we have a letter here that we would like to have made a part of the record. It is a copy of a letter that we received from these attorneys that I think probably will take care of that matter.

Will you all stipulate to this going into the record?

It is a copy of your letter to us.

Mr. Rutledge: I don't stipulate to its relevance at all, but it is certainly an accurate copy of the letter.

The Court: Well, I will determine its relevance. Without objection—the authenticity of it, of course, is not in [fol. 95] question—we will accept it in evidence.

The Clerk: Plaintiffs' Exhibit No. 2 received in evidence.

Thereupon, the instrument above-referenced was received and filed in evidence as Plaintiffs' Exhibit No. 2.

• • • • • • •

[fol. 99] EXCERPT FROM ARGUMENT OF MR. TOWERS

Now, we don't seek to require anybody to cross a picket line.

In the Port Authority case, FEC was seeking to require the Port Authority, their employees, to cross the FEC picket line.

We seek *no* such relief as that.

What we want is to get this picket line down so that our employees will go ahead and do our work; and we are, as Your Honor inquired, suffering irreparable harm.

• • • • • • •

[fol. 107] EXCERPT FROM ARGUMENT OF MR. ADAMS

The Court: Is it significant that the FEC could not operate its trains without the assistance of the Terminal? [fol. 108] It is an integral part of the operations of the FEC, is it not?

Mr. Adams: It is true that the FEC could not operate its trains without the assistance of the Terminal Company. And neither could the Atlantic Coast Line Railroad Company or the GS&F or the Southern or the Seaboard.

I think this is the reality of the situation.

However, we say that the Norris-LaGuardia Act must be accommodated to the Interstate Commerce Clause or Interstate Commerce Act. And they have been given ample opportunity to reach both the public and the employees of the FEC.

We have a separate gate up which they may picket.

The FEC has ample facilities in St. Augustine and down throughout the State. They can reach them there.

And there is no need to come in and completely tie-up and paralyze the rail industry in Florida to accomplish this purpose.

Short of this we have no remedy, Your Honor. We have no remedy at Law or in Equity or anywhere.

[fol. 109] We can't go to the Railway Labor Board, and we cannot enjoin our employees.

And so thus we are faced with the realities of the situation; and we feel that our presentation has been sufficient and that the Court should enter the temporary restraining order.

• • • • • • •

[fol. 125] CERTIFICATE OF REPORTER

I Hereby Certify that the foregoing is a correct and complete report of the proceedings detailed herein, reported by me personally and transcribed under my supervision.

Edward R. Mack, Official Reporter.

[fol. 1]

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 66-537-Civil-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, JACKSONVILLE TERMINAL COMPANY, a corporation, and SEABOARD AIR LINE RAILROAD COMPANY, a corporation, Plaintiffs,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN and LOWELL KENNEDY, individually and as an official of said Brotherhood; ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, and T. C. BOLAND, individually and as an official of said Order; BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, and J. E. EASON, individually and as an official of said Brotherhood, Defendants.

At Jacksonville, Florida

Before Hon. William A. McRae, Jr., Judge.

Report of Proceedings Upon Application for Temporary Injunction—May 9, 1966

Edward R. Mack, Official Reporter.

[fol. 2]

APPEARANCES

For the Atlantic Coast Line Railroad Company—

Messrs. Rogers, Towers, Bailey, Jones & Gay, Florida Title Building, Jacksonville, Florida, By: Charles D. Towers, Esquire.

For the Seaboard Air Line Railroad Company—

Messrs. Cox, Grissett & Webb, American Heritage Life Building, Jacksonville, Florida, By: W. E. Grissett, Esquire.

For the Jacksonville Terminal Company—

Messrs. McCarthy, Adams & Foote, Atlantic National Bank Building, Jacksonville, Florida, By: A. G. Adams, Esquire.

For Defendants—

Messrs. Rutledge & Milledge, 6th Floor, Flagler Federal Building, 111 N.E. 1st Street, Miami, Florida, By: Neal Rutledge, Esquire and Allan Milledge, Esquire.

[fol. 5] The Court: Call the first case, Mr. Clerk.

The Clerk: Case No. 66-537-Civil-J; Atlantic Coast Line Railroad Company et al., versus Brotherhood of Railroad Trainmen, et al.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Are you ready for the plaintiffs?

Mr. Towers: Ready for the plaintiffs.

Mr. Adams: The plaintiffs are ready.

The Court: Are you ready for the defendants?

Mr. Rutledge: The defendants are ready, Your Honor.

The Court: All right, Gentlemen, you may proceed.

Mr. Towers: Your Honor, at this time we have no further live testimony to present.

However, we have an affidavit that we would like to submit. I see no need to spend any undue time on it.

[fol. 6] It deals primarily, if not entirely, with the irreparable damage to be suffered unless this injunction stays in force.

Do you have a copy of Mr. Andrews' affidavit?

Mr. Rutledge: Your Honor, we object to the use of affidavits in this Application.

We feel that Norris-LaGuardia requires that evidence presented on applications for temporary injunction be live testimony subject to cross-examination.

The Court: I think, inasmuch as there was ample opportunity here for the obtaining of witnesses, that the objection is well taken. So I will not consider the affidavits.

Call the witness, Mr. Towers.

Mr. Towers: All right, sir.

The Court: If you want him to give the affidavit. Undoubtedly he is available.

Mr. Towers: Mr. Andrews.

[fol. 7] Mr. Milledge: Your Honor, just for clarification, all of the testimony taken at our former hearing will be considered as part of this hearing?

The Court: Yes, definitely. Yes.

Mr. Towers: Your Honor, we thought it was fairly clear under the Rules that it was all right to submit affidavits. Mr. Andrews is not here but he will be here in about ten minutes.

Some of the other witnesses that the other plaintiffs intended to tender affidavits from are here and we might go ahead and proceed with some of those.

The Court: Well, there is no magic in the order. You can take any order that will conserve the time, but I want to proceed with the hearing.

Now, do you have another witness? Or does another plaintiff have a witness?

Mr. Towers: Another plaintiff has one.

[fol. 8] The Court: Well, let's have the witness.

Mr. Towers: Until Mr. Andrews comes back.

The Court: All right, that is satisfactory.

Mr. Adams: Do you want me to proceed?

Mr. Towers: Yes.

Mr. Adams: Your Honor, at this time, I will recall to the stand Mr. Jennette, the President of Jacksonville Terminal Company.

MARSHALL C. JENNETTE, produced and sworn as a material witness on behalf of plaintiffs, testified as follows:

Direct examination.

By Mr. Adams:

Q. Mr. Jennette, I want to ask you only a couple of brief questions for the purpose of orienting you to the testimony, and I want to recall your attention to the cross-examination of the defendants with respect to the participation, so to speak, of the Florida East Coast in the operations of Jacksonville Terminal Company.

[fol. 9] Now, as President and General Manager of Jacksonville Terminal Company, do you have an informed opinion with respect to the total ticket sales down at Jacksonville Terminal Company; what percentage of those ticket sales are FEC and what percentage of the ticket sales are attributable to the other tenant lines?

Mr. Milledge: We object. I can't see the relevancy of it. If there are FEC operations, that might have some relevance.

The Court: I will overrule the objection. I think it has relevance. It might be slight.

It will go to the weight of the testimony, not to the admissibility.

The objection is overruled. Proceed.

By Mr. Adams:

Q. Will you answer the question?

A. Approximately one-half percent of the ticket sales are for the account of Florida East Coast Railroad, and the balance are for the other three lines.

Q. Approximately how much? One-half?

A. One-half of one percent.

[fol. 10] Q. One-half of one percent. Okay.

Now, with respect to the total passenger equipment which is handled and switched and shifted back and forth in the Terminal Company facilities on a day-to-day basis, what percentage of those, or what percentage of the total passenger equipment handled is handled for the FEC, as opposed to being handled for the other tenant lines?

A. About six-tenths of one percent. Just slightly over one-half percent.

Q. All right, sir. I think that is all.

Cross examination.

By Mr. Milledge:

Q. Mr. Jennette, what were those figures pre-strike—that is, pre-non-op strike—which started on January 23, 1963?

Mr. Adams: What is the date on that?

Mr. Milledge: January 23, 1963—or was it 1962?

Mr. Adams: Your Honor, I object to that as going beyond any question here. The strike that we are concerned with here is the period immediately preceding May 4, 1966.

[fol. 11] The Court: The objection is overruled.

By Mr. Milledge:

Q. What was it for the year 1962, approximately?

A. I don't have those figures available. I could obtain them from our records, but I don't carry figures that far back in my head.

Q. Do you remember how many trains the FEC operated then? Passenger trains?

A. I believe it was approximately five in and five out a day.

Again, I would have to check.

Q. And were they substantially of the same size as the ACL and Seaboard trains?

A. Approximately, yes.

Q. And about how many ACL and Seaboard trains operated at that time? Passenger?

A. Well, there were considerably more ACL than Seaboard trains.

But I would have to refer to a time table that far back.

Q. How many ACL and Seaboard trains in and out are there today?

A. There are ten Seaboard trains in and ten Seaboard [fol. 12] trains out a day, and there are twelve Atlantic Coast Line trains in and twelve out a day.

Q. Would that be roughly the same number that there were in 1962?

A. No, sir. It has been reduced some.

I believe it was approximately—I would venture a guess of about twenty-seven trains a day in and out at that time, where now there are twenty-two trains a day in and twenty-two out a day.

So I think it is approximately five trains less.

Q. Do you mean five trains less of these five FEC trains?

A. No. At one time, you know, there were three Southern trains in and three out, back in 1962.

Q. In any event, in 1962 there were five FEC trains in and five out, and no more than thirty-two or so—thirty-five, perhaps—others in and out?

A. I would say that is approximately.

Q. All right.

A. I can't be accurate because I don't have the records with me.

Mr. Adams: If Your Honor please, may I interpose an objection at this time? This goes back prior to the status— [fol. 13] The Court: The objection is overruled. I understand what the dates are.

By Mr. Milledge:

Q. Now, Mr. Jennette, is FEC freight interchanged in your yards with other carriers?

A. The FEC interchanges freight on Terminal property with other carriers.

Q. All right. Did you bring any figures as to the proportion of freight interchanged on your property with FEC, as compared with the other lines?

A. In the month of March of this year, it was approximately thirty percent of the freight handled was to or from the Florida East Coast Railroad.

Mr. Milledge: That's all.

Redirect examination.

By Mr. Adams:

Q. Mr. Jennette, what services are performed by the Jacksonville Terminal Company in connection with the interchange by the FEC with other carriers of its freight?

A. Well, we line up the switches and the railroads make their own moves.

[fol. 14] Q. How are the switches lined up?

A. Well, those within the Interlocking Plant area are lined up through the Towerman. And those that are not connected to the Interlocking Plant, the train crews themselves throw those switches down at the freight yards.

Q. What train crews? The FEC train crews?

A. The FEC train crews would throw their switches and move their trains, and the Seaboard likewise would throw theirs, or any other road.

Q. Then the Jacksonville Terminal Company does not physically handle these freight movements?

A. No, we don't have any physical connection with handling the train itself.

Mr. Adams: That's all.

Recross examination.

By Mr. Milledge:

Q. Your tower operators throw some of the switches?

A. Yes, within the Interlocking Plant area. There are three of those.

Q. And do your personnel maintain the tracks that this is done on?

A. Yes, sir, we maintain all Terminal Company owned property.

[fol. 15] Q. The tracks, signals, switches, towers—

A. Yes, sir. The station and all.

Q. Now, in addition to the interchange that takes place on your property, in which your crews are not involved, does not the Jacksonville Terminal also itself interchange with the FEC?

A. We have a few cars that are interchanged with the FEC.

Q. Do your crews handle those cars that are interchanged with the FEC?

A. When they are delivered in our yard for our placement, or whatever the service may be that we render to them, we pick them up and do the necessary placement of the cars.

Q. And classification?

A. If they are coming to industries within the Terminal that we serve.

Mr. Milledge: All right.

Further redirect examination.

By Mr. Adams:

Q. Mr. Jennette, does the Jacksonville Terminal Company own its own tracks?

A. Yes.

[fol. 16] Q. Do you own the station facilities?

A. Yes, sir.

Q. And does the Jacksonville Terminal Company own *its own railroad* equipment?

A. Yes.

Q. Does it employ its own employees?

A. Does the Terminal Company do what?

Q. Does Jacksonville Terminal Company employ its employees? Employ its own employees?

A. Oh, yes. We have got our own Personnel Department, and all the employees that we have are carried on our Seniority Roster and are employees of the Terminal Company only.

The Court: You may step down, Mr. Jennette.

Call the next witness.

Do you have further questions?

Mr. Milledge: We would like Mr. Jennette to stay, because we might have a document to have him identify.

The Court: All right, Mr. Jennette, you will remain available.

Call the next witness.

[fol. 17] Mr. Adams: Mr. Harrington.

ARTHUR CALEB HARRINGTON, produced and sworn as a material witness on behalf of plaintiffs, testified as follows:

Direct examination.

By Mr. Adams:

Q. Mr. Harrington, please state your full name for the record.

A. Arthur Caleb Harrington.

Q. And what is your position or occupation?

A. Master Mechanic, Jacksonville Terminal Company.

Q. And what department do you work in, and what is your position in that department?

A. I am responsible for the management and the operation of the Mechanical Department.

Q. What services does that department furnish on behalf of Jacksonville Terminal Company?

A. The Mechanical Department is responsible for the maintenance, the inspection, and servicing on locomotives and cars for the railroads, as well as maintaining certain plant equipment for the Terminal Company.

Q. Approximately how many employees do you have working for you?

[fol. 18] A. 215.

Q. Mr. Harrington, at my request did you make an investigation to determine how many man hours were worked by your department in March, 1966?

A. Yes, sir.

Q. Please state to the Court the approximate amount of man hours performed.

A. Forty thousand seven hundred and some odd hours.

Q. And did you also make an investigation to determine what your payroll was for that period?

A. Yes, sir.

Q. March, 1966?

A. Yes.

Q. What was that?

A. It was $117,000, or a little better.

Q. Mr. Harrington, what was the effect on your department as a result of the picketing which appeared on the premises of Jacksonville Terminal Company on May 4, 1966?

A. Our operation was affected to the extent that employees would not cross the picket lines and I had to hold the men that I had on duty on overtime to take care of the train operations.

So we were affected in that the men would not cross the [fol. 19] picket line. And we could only operate as long as we could hold the men on the job.

Q. How long do you think that you could effectively do that?

A. About as long as a man can physically hold up to work and cooperate with you by working; which would run maybe sixteen hours; or a few more.

Mr. Adams: That is all.

Cross examination.

By Mr. Rutledge:

Q. Mr. Harrington, where is this work that your department does performed?

A. On the Jacksonville Terminal property; at the station, at the locomotive shop, and the car repair shop.

Q. Now, in that car repair shop, are FEC cars ever worked on?

A. Yes, sir.

Q. Passenger cars?

A. Yes, sir.

Q. Freight cars?

A. No, sir.

Q. Just passenger cars?

A. Yes, sir.

[fol. 20] Q. What about engines?

A. Yes, sir.

Q. FEC engines are worked on there?

A. Right.

Mr. Rutledge: No further questions.

The Court: You may step down, Mr. Harrington.

Mr. Adams: Your Honor, I am not quite through.

The Court: You have further questions? Well, let's proceed, please.

Redirect examination.

By Mr. Adams:

Q. Mr. Harrington, of the FEC passenger cars which are worked on in your facility, what percentage of them are FEC as opposed to the rest, if you know?

A. It amounts to one-half of one percent of our passenger cars handled.

Q. All right, sir.

Mr. Harrington, just one other question. What trades are included in your department?

A. Well, in addition to the supervisors and clerks, there [fol. 21] are machinists, electricians, carmen, pipefitters, sheet metal workers, helpers, laborers, car cleaners, and ice and water men.

Mr. Adams: That's all.

Mr. Rutledge: I have only one question.

Recross examination.

By Mr. Rutledge:

Q. The trades that work in your department are generally described as the non-operating crafts; is that correct?

A. That is correct.

The Court: You may step down, Mr. Harrington.

Call the next witness, please.

Mr. Adams: Mr. Jones.

Glenn Gene Jones, produced and sworn as a material witness on behalf of plaintiffs, testified as follows:

Direct examination.

By Mr. Adams:

[fol. 22] Q. Mr. Jones, please state your full name for the record.

A. Glenn Gene Jones.

Q. And what is your business or occupation?

A. General Baggage and Mail Agent for Jacksonville Terminal Company.

Q. All right, Mr. Jones, what is your position in the Baggage Department, the Mail and Baggage Department?

A. General Agent.

Q. General Agent. What services or functions does that department serve or perform?

A. We receive, load, sort, or separate, store, and properly dispatch all U. S. mail; check baggage, and remains of the deceased; arriving and departing the Jacksonville Terminal Company on all mail express passenger trains.

Q. Is the mail that is handled, is that done under contract?

A. Yes.

Q. With whom?

A. The Post Office Department.

Q. The United States Government?

A. Yes.

Q. All right. Mr. Jones, how many people do you employ in your department, or are there employed in your [fol. 23] department?

A. 225 right now.

Q. Now, did you make any investigation to determine how many man hours were worked in your department for the month of March, 1966?

A. Yes, sir.

Q. Do you recall what that was?

A. 37,141 man hours.

Q. And what was the payroll there?

A. $100,476.

Q. Are you able to state how many sacks of mail were handled by your department during the month of March, 1966?

A. It would be over two million.

Q. And what relationship does this bear to all of the United States mail in and out of the State of Florida, or within Duval County?

A. Will you repeat the question, please?

Q. What relationship does the mail that you handle bear to the total mail going in and out of Duval County, Florida?

A. The Post Office Department advised me that we handle 98%, but I would say 95% of all mail entering and leaving the State of Florida we handle.

Q. Mr. Jones, what effect did the picketing of May 4, [fol. 24] 1966, have on your department?

A. The pickets showed up at 3:15 a.m., prior to the checking on of my 5:00 a.m. shift, and I was forced to operate—they did not cross the picket line.

I was forced to hold on duty the men who had been on duty the night before—all night long, rather.

Q. Mr. Jones, in the event of an interruption of service of your mail, what is the effect of it?

How long does it take you to catch up from one day's interruption?

A. If we shut down completely for 24 hours, it would take approximately six days to come out from under one 24-hour shut down.

Mr. Adams: That's all.

Cross examination.

By Mr. Milledge:

Q. The employees that you have been talking about are employees of the Jacksonville Terminal Company?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Mr. Adams: That's all, Your Honor.

[fol. 25] The Court: All right, you may step down, Mr. Jones.

Alfred G. Johnson, produced and sworn as a material witness on behalf of the plaintiffs, testified as follows:

Direct examination.

By Mr. Adams:

Q. Mr. Johnson, please state your full name for the record.

A. Alfred G. Johnson.

Q. What is your business or occupation?

A. Operations Manager, R.E.A. Express.

Q. What is R.E.A. Express?

A. Railway Express Agency.

Q. Where is that located? In Jacksonville?

A. Jacksonville, Florida.

Q. Where is it located with respect to the Jacksonville Terminal?

A. It adjoins the Terminal Company. It is on Myrtle Avenue and Bay Street.

Q. Is it true that the Railway Express Agency leases its premises from Jacksonville Terminal Company?

A. That is correct.

Q. Mr. Johnson, how many employees are employed by [fol. 26] Railway Express Agency?

A. Well, our business is seasonal. It fluctuates. But at the present time it is approximately 325 employees.

Q. At my request, did you make an investigation to determine approximately how many man hours that represented for the month of March, 1966?

A. Giving you the actual net hours for March, 1966, it was 59,878 hours.

Q. How many pieces of express did you handle during the month of March, 1966?

A. During the month of March—this is traffic arrriving in Jacksonville and traffic departing from Jacksonville—2,218,992 pieces.

Q. Mr. Johnson, is any of this express business handled for the account of the Florida East Coast Railway Company?

A. No, sir.

Q. What sort of express is handled, in types of goods?

A. Well, we handle perishables.

We handle remains, of course.

Q. Give me examples of perishable goods that you handle.

A. Well, we handle flowers, cut flowers.

We handle fish, oysters, shrimp; all sea foods.

[fol. 27] We handle ferns and plants. And Government traffic.

Q. Do you handle any fruit?

A. Oh, yes. Citrus fruit is, I would say, 50% of our present volume.

Q. Let me ask you this. Does the Railway Express Agency have any independent tracks that it owns, or any access out of its place?

A. No, we depend on the Jacksonville Terminal Company to do our switching of cars in and out of our terminal.

Q. Mr. Johnson, is it possible for you to give us an average hourly rate that your 325 employees make?

A. It would have to be from memory.

I would say it is $2.64 per hour.

Q. That is approximate?

A. That is an average rate.

Mr. Adams: That's all.

The Court: You may step down.

Mr. Milledge: I have some cross, Your Honor.

The Court: I'm sorry.

[fol. 28] Cross examination.

By Mr. Milledge:

Q. Did your employees come to work last week?

A. Yes, sir.

Q. There wasn't any day when they didn't come to work?

A. Well, no.

Q. They came to work.

What you are saying is that if the Terminal is closed down and you don't have any source of railroad cars to unload?

A. Then I would have to dismiss them.

Mr. Milledge: All right.

Redirect examination.

By Mr. Adams:

Q. Mr. Johnson, did you have any trouble getting your freight out of there last week? Or your express?

A. Yes, I did. As a matter of record here, we had 16 cars down in the Jacksonville Terminal Company that we could not get to our platform.

We had six cars there at our platform that we could not get out of the City of Jacksonville, due to the picketing.

[fol. 29] Q. And what happens to your perishable items when they are unduly delayed?

A. Well, they are ruined.

The Court: Any further cross, Mr. Milledge?

Mr. Milledge: No, sir.

Cecil Wilburn Batton, produced and sworn as a material witness on behalf of plaintiffs, testified as follows:

Direct examination.

By Mr. Adams:

Q. Mr. Batton, will you please state your full name for the record.

A. Cecil Wilburn Batton.

Q. What is your business or occupation?

A. Superintendent of Transportation of the Jacksonville Terminal Company.

Q. Mr. Batton, what classification of employees are employed in your department?

A. We have clerks, yardmasters, interlocking towermen, and the operating crafts: switchmen, conductors, engineers, hostlers, and firemen.

Q. Approximately how many men are presently working [fol. 30] in your department?

A. We have 174.

Q. Mr. Batton, at my request, did you make investiga-

tion to determine how many man hours were performed during the month of March, 1966?

A. As I recall, it was 123,000 plus.

Q. Mr. Batton, do you know what the approximate payroll was for the month of March, 1966, for your department?

A. It was slightly in excess of $91,000.

Q. What was the effect on your department as a result of the picketing on May 4, 1966?

A. The employees that were on duty at the time remained on duty, a portion of them did, until the Hours of Service Law caused them to cease working and they left the property.

We do have clerks and yardmasters that don't come under the Hours of Service Law, and of course some of them remained longer.

At that time, subsequent to that, some small amount of supervisory personnel came on but we were not able to complete our job.

Q. Mr. Batton, what is the practical effect if the Transportation Department of Jacksonville Terminal Company comes to a screeching halt?

[fol. 31] A. Regardless of what any of the other departments do, if my department ceases to function then nothing happens.

There is no movement of trains on the property.

Q. What is the effect on the towers that control the freight interchanges?

A. It is not possible to interchange cars, if the towermen are not there.

Q. Is it possible to throw those switches by hand?

A. Not within the Interlocking Plants, no, sir.

Mr. Adams: No, sir.

Cross examination.

By Mr. Milledge:

Q. Do your tower operators throw switches for FEC movements coming across the St. Johns River?

. Yes.
. Into your yards?
. Yes.
. Do those towermen desire to throw those switches the FEC?

Ir. Adams: Your Honor, I object to that as calling for onclusion.

. 32] The Court: I sustain the objection.

By Mr. Milledge:

. Is it not true that your towermen have told you that y do not wish to throw the switches for a struck carrier?

Ir. Adams: I object to that as calling for hearsay.

The Court: The objection is overruled.

The Witness: No, sir; they have not. Not to me sonally.

By Mr. Milledge:

. Is it not true that if your towermen refuse to throw switch on your side of the St. Johns River, that no FEC ements could come into your yards?

. That is correct.

Ir. Adams: Your Honor, I object to that as being irrele- t and immaterial because it is a matter of record that employees of Jacksonville Terminal Company are ently under a Court Order and are required to throw switches.

. 33] The Court: The objection is overruled.

re there any further questions?

ou may step down, Mr. Batton.

all your next witness, please.

r. Adams: Your Honor, that is all the testimony that sonville Terminal Company has to present.

he Court: All right, Gentlemen. You may proceed for defendants.

r. Rutledge: Your Honor, I understood that the other ntiffs had some testimony.

Mr. Towers: We do. That is correct.

The Court: I'm sorry. I thought he was making that representation for all of the plaintiffs.

Do you have something, Mr. Towers?

Mr. Towers: Yes, Your Honor. I think Mr. Grissett does, too.

[fol. 34] Mr. Grissett: I have some, too.

The Court: All right. I am not cutting you off. I just misunderstood the representation of Mr. Adams.

L. T. Andrews, produced and sworn as a material witness on behalf of the plaintiffs, testified as follows:

Direct examination.

By Mr. Towers:

Q. Would you state your name, please, sir?

A. L. T. Andrews.

Q. What is your occupation, Mr. Andrews?

A. General Manager for the Atlantic Coast Line Railroad Company.

Q. All right, sir.

Now, Mr. Andrews, would you briefly describe the facilities that are operated and maintained by the Jacksonville Terminal Company with respect to its passenger station and its freight yards here in Jacksonville?

A. Well, the Jacksonville Terminal Company is jointly owned by the Atlantic Coast Line, Southern Railway, Seaboard, and Florida East Coast; and it provides the only passenger station within the City of Jacksonville.

[fol. 35] It has freight yard facilities for the interchange of all traffic between the lines involved within the City of Jacksonville; and it serves some industries that have plant sites on the Jacksonville Terminal Company's property.

Q. All right, sir.

What does it have to do, if anything, with the United States mails and mail service?

A. It is the point of interchange or sorting or handling of mail between all rail lines in and out of Jacksonville and truck lines that service mail or handle mail to and from Jacksonville.

I would say that about 95% of the mail coming to Florida is handled through the facilities down there.

Q. Now, Mr. Andrews, what, if anything, can you tell us about the operations of these different railroads that you mentioned a minute ago with respect to adjoining and sister stations?

A. Well, the railroads—Atlantic Coast Line, Seaboard, and Southern—they handle traffic in interstate commerce to and from all parts of the United States, along with their connections, and to and from Florida.

The traffic moving to and from Florida is interchanged here at Jacksonville when it moves through this gateway, [fol. 36] between the various railroads, for movement down to Cape Kennedy of the military installations down State.

And the northbound, the perishable traffic, which is very important to the Florida farmers and growers, is now moving in probably the heaviest volume for this year and will continue in very heavy volume for the next 30 days or more. And it is a tremendous movement of traffic through Jacksonville.

Q. Mr. Andrews, with respect to States that the cars are handled in by other railroads and States that cars are handled in by the Atlantic Coast Line Railroad Company, would you just briefly tell us which States there are where freight cars of the Atlantic Coast Line are handled themselves?

A. The Atlantic Coast Line operates in six States. That is, Virginia, North Carolina, South Carolina, Florida, Georgia, and Alabama.

Q. All right, sir. And then in the other States of course the cars are turned over to other railroads?

A. There are connecting railroads to move to various destinations throughout the United States.

Q. What can you tell us about the number of passenger trains that move into and out of the Jacksonville Terminal Company, which are operated by the Atlantic Coast Line [fol. 37] Railroad?

A. The Atlantic Coast Line operates a total of 22 passenger trains per day in and out—in or out of the Jacksonville Terminal Company—which means we have 11 trains in and 11 trains out.

Q. Now, Mr. Andrews, so that we can have some sort of idea of how many cars there are in these trains, can you give us the total for the month of March, 1966, of the number of passenger cars that were operated into and out of the Terminal by the Atlantic Coast Line Railroad?

A. For the month of March, the Atlantic Coast Line handled a total of 11,628 passenger cars in and out of the Jacksonville Terminal Company.

Q. All right. And can you tell us for the year 1965 how many passenger cars were handled in a like fashion?

A. For the year 1965, the Atlantic Coast Line handled 117,171 passenger cars in a like manner.

Q. Now, with respect to the United States mails, Mr. Andrews, can you tell us approximately how many cars are handled that involve the United States mails?

A. The Atlantic Coast Line handles a daily average of 30 cars with U.S. mail and 22 trailers with U.S. mail; and, in addition, we handle an average of 12 RPO cars; that is, cars whereby the mail—that is, cars which have space [fol. 38] within the cars for sorting, separation, and handling of U.S. mail.

The employees within the cars are employees of the Post Office Department of the U.S. Government.

Q. All right, sir.

Would you expound somewhat on the 22 trailers that you handle daily, on an average, please, sir?

A. Well, the 22 trailers, some of them are handled in what we refer to as piggy-back service; that is, they come into or out of Jacksonville on freight cars—flat cars, and

are loaded and unloaded at the Jacksonville Terminal Company Mail Shed.

Some of the trailers are handled over the highway by tractors between Jacksonville, Tampa, St. Petersburg, Fort Myers, Lakeland, and so forth.

Q. So that the Court may have a better understanding of the volume of mail that is handled on a daily basis by the Atlantic Coast Line Railroad, could you translate this to us in sacks of mail per day?

A. It will average 17,761 sacks of mail per day handled by the Atlantic Coast Line.

Q. All right, sir. Now, with respect to freight cars that were interchanged in Jacksonville by the Atlantic Coast Line Railroad, can you give us any figures for the month [fol. 39] of March, 1966?

A. March, 1966, the Atlantic Coast Line interchanged with the other railroads in Jacksonville a total of 23,933 freight cars.

Q. Can you tell us for last year—that is, 1965—what those figures were for the entire year?

A. For the year 1965, the total number of cars interchanged by the Atlantic Coast Line to other railroads amounted to 228,530 cars.

Q. Now, referring to the type of cargo that these freight cars carried, can you tell us anything about the nature of that freight as it relates to our military efforts, or the Space Program at Cape Kennedy?

A. Well, there have been some movements, a large number of movements, in and out of Jacksonville that go to Cape Kennedy and the Missile Site installation down there.

We have handled others to various other military installations in Florida.

There are all types of military traffic moving along with the regular commercial traffic.

Q. Now, Mr. Andrews, you testified last week as to the location of pickets that were observed by you in the early morning of May 4, 1966.

Do you recall giving testimony along those lines before [fol. 40] the Court last week?

A. Yes, I do.

Q. Is there anything that you would care to add to what you testified along these same lines last week?

Mr. Milledge: I object to that. It is awfully vague. I think it ought to be more specific.

The Court: I sustain the objection. It is a little vague.

Mr. Towers: Well, suppose we go on through it.

By Mr. Towers:

Q. Mr. Andrews, tell us what you did observe last week; that is, on May 4th, 1966?

Mr. Milledge: Objection. If he is going to add something, I am sure he can be asked a question that would elicit it.

The Court: He hasn't finished his question.

Mr. Milledge: I'm sorry.

[fol. 41] The Court: Had you finished that question?

Mr. Towers: No, I hadn't. I will state it again.

The Court: All right, rephrase it.

Mr. Towers: All right, sir.

By Mr. Towers:

Q. Would you tell us what happened, if anything, with respect to pickets after 3:00 a.m. on May 4th, 1966?

Mr. Milledge: My objection is that we have been through this once. It is in the record.

The Court: Well, I will let him answer the question. The objection is overruled.

The Witness: Well, around 4:30 in the morning of May 4th, I rode down to the station and made a short trip in the area.

I observed pickets, two of them, at the entrance to the Atlantic Coast Line dining car commissary.

There was one on what I refer to as Water Street. [fol. 42] There is probably another name for it. On up toward the Lee Street viaduct, at the entrance where the ice and various materials are delivered to the Jacksonville Terminal Company.

The Court: Just a minute.

Mr. Towers, I think we had a map introduced with the pickets shown specifically on the map. We certainly had the testimony.

I don't know that it is necessary to repeat all the locations.

Mr. Towers: I didn't mean to repeat it all, but anything that had not been covered.

The Court: This is repetitious of what the Court has.

Mr. Towers: I thought so, myself.

By Mr. Towers:

Q. Insofar as your knowledge about pickets and where they were located, you gave that to the best of your ability last week when you testified; did you not?

A. I did.

Q. Were any of these employees—these pickets that we [fol. 43] are discussing—employees of the Atlantic Coast Line Railroad?

A. No, sir, not that I could recognize.

Q. Have any of the employees of the Florida East Coast Railway Company made any demands on the Atlantic Coast Line Railroad?

A. Not to my knowledge.

The Court: Just a second.

Mr. Reporter, would you read the last two questions back?

The Reporter:

"Q. Have any of the employees of the Florida East Coast Railroad Company made any demands on the Atlantic Coast Line Railroad?

"A. Not to my knowledge."

The Court: What was the previous question?

The Reporter:

"Q. Were any of these employees—these pickets that we are discussing—employees of the Atlantic Coast Line Railroad?

[fol. 44] "A. No, sir, not that I could recognize."

The Court: Those were the questions. Thank you.

By Mr. Towers:

Q. Have any of these pickets made any grievance against or had any dispute with the Atlantic Coast Line Railroad?

A. Not to my knowledge.

Q. What effect, if any, Mr. Andrews, will these pickets that were in existence there for the greater part of a day, on May 4th, 1966, have upon the Atlantic Coast Line Railroad and its operations?

A. Well, if we are faced with the picket lines on a somewhat similar basis as we had on May 4th at the station, on a continuing basis, we would have to drastically curtail our passenger train operations.

We plan on eliminating trains Nos. 37 and 38 between Jacksonville and St. Petersburg.

Trains No. 191 and 192 between Jacksonville and St. Petersburg.

Trains No. 75 and 76, between Jacksonville and Tampa.

Consolidated trains that we refer to as 1-5 and 2-6, be-

[fol. 45] tween Jacksonville and Miami.

And what we refer to as the Western Streamliners, that is the City of Miami and the Southwind, between Chicago and Jacksonville-Miami.

When you give two numbers for a train, would you explain to the Court what the designation is of those two numbers for one train?

A. Well, we will consolidate what we refer to as our trains No. 1 and No. 5 for the operation Jacksonville to Miami into one train. When I referred to 1-5 and 2-6, that meant one consolidated train in each direction every day.

Q. With respect to just the passenger crews upon these passenger trains that would be eliminated if pickets were restored, can you tell us, sir, how many of those employees there are?

A. In train service employees, there would be the train service dining car and coach attendants. Of the Atlantic Coast Line employees, there would be 129 men affected that we would cut off or discontinue using if we have to curtail the train operations.

Q. These are just the passenger train crews; is that right?

A. That is correct.

[fol. 46] Q. For those passenger trains that you would continue to run, would you tell the Court how you would expect to handle those?

A. Well, we would attempt to handle the trains, provided the pickets were established, by using supervisory personnel to bring them into the station; and, after they came up to the locations where picket lines were located, provided the regular crews declined to go through.

On the outbound trains, if the regular crews failed to report to the job sites within the Terminal station, we would use supervisory personnel to take the trains outside of the Terminal Company.

Q. Can you give the Court some idea of the daily wage loss of these passenger crews who would not be working because of the discontinuance of the trains that you described?

A. For the year 1965, the average wage, for all employees of the Atlantic Coast Line, amounted to $7,200 per year. So, based on eliminating the trains, with the 129 men that would be eliminated, the average wage loss for the men would amount to approximately $2,500 per day.

Q. Would you describe for His Honor what, if anything,

will happen with respect to the operation of freight service through Jacksonville if these pickets are restored?

[fol. 47] A. If the pickets are restored, with somebody at the same locations that they were on May 4th, it would mean that our freight trains between Tampa, Sanford, and South Florida destinations to Jacksonville, and from Jacksonville to Sanford, Tampa, and South Florida destinations, would be affected, because they would have to cross Dennis Street, at which location pickets were stationed on May 4th, although the track across Dennis Street is owned by the Atlantic Coast Line.

They would also have to cross McQuade Street, in getting to and from the yard in both directions; so, if the regular crews decline to cross the picket line, we would have to call in supervisory personnel from various points on the Coast Line and man the trains to get them through the area where the pickets were involved, which would cost us considerable money and seriously affect our over-all operations because all of the supervisors that we have employed are badly needed at the points to which they are assigned.

Q. What, if any, is the effect of attempting to operate your trains with supervisory personnel, with respect to safety hazards?

A. Well, the supervisory personnel are not accustomed to doing the everyday work of the train service employees, [fol. 48] and naturally anyone that hasn't been doing that work, day in and day out, it is more hazardous to the men and to the operation to have people placed on the job that do not have everyday knowledge of just the ins-and-outs and just how to go about it.

Mr. Towers: You may examine.

Cross examination.

By Mr. Milledge:

Q. Mr. Andrews, does the ACL have trackage into Cape Kennedy?

A. No, sir. We interchange that traffic to the Florida East Coast at Jacksonville.

Q. So, when you were talking about the Space Effort, and so forth, you were talking about shipments over a struck carrier?

A. No, we were talking about the interchange at Jacksonville.

Q. All right, sir.

Now, is it not possible for you to bypass Jacksonville completely for through movements of freight or passenger service?

A. You will have to define what direction you want to go, and then I can tell you.

[fol. 49] Q. All right. Well, let's come up from the South, headed North.

A. If you come up from Tampa-Sanford area, you cannot bypass the Jacksonville Terminal Company and get into Moncrief yard; no, sir.

Q. I'm not talking about getting into Moncrief yard. I'm talking about going up into Georgia.

A. For the flow of traffic, it is such that it is not practical or feasible to bypass Jacksonville. You have got to come through here in order to have an orderly flow of traffic.

Now, apparently you have reference to re-routing the traffic through High Springs and Waycross.

High Springs and Waycross have got all they can do today, and some days they have been behind in their work.

It is not practical to do that.

Q. Well, you do have other trackage west of Jacksonville?

A. We have the trackage but—

Q. All right.

A. —we do not have the capacity on that trackage to handle the additional business.

Q. Mr. Andrews, are there FEC movements on ACL property in the Moncrief yards?

[fol. 50] A. The interchange is on the Atlantic Coast Line property at Moncrief yard.

Q. The FEC engines, crews, and cuts of cars, if they are moving northbound, move through the Jacksonville Terminal and into Moncrief yard?

A. That is correct.

Q. And that is where interchange is made?

A. Between the Atlantic Coast Line and the Florida East Coast.

Q. Mr. Andrews, what percentage of the freight handled in Moncrief yard comes from or goes to the FEC?

A. I don't have those figures. I just would have to guess and the guess wouldn't be any good.

Q. It is more than one-third, is it not?

A. That comes through Moncrief? I would say it would not amount to a third. That is without the benefit of my figures.

Mr. Milledge: That's all.

Redirect examination.

By Mr. Towers:

Q. Mr. Andrews, with respect to whatever facilities are located at High Springs and Waycross, are these comparatively small compared to the interchange facilities here in [fol. 51] Jacksonville Terminal Company?

A. Yes, sir. And of course High Springs and Waycross, that would eliminate completely the interchange between the Coast Line and the Southern, the Coast Line and the Seaboard, and the Coast Line and the FEC, so far as Florida business is concerned. And we just don't have the capacity there to handle that traffic which is now moving into and out of Jacksonville from our Tampa and Ocala Divisions.

Q. With respect to those two facilities, are they operating near capacity at this time without any of the volume you have just described that comes to Jacksonville Terminal Company?

A. They are at top capacity. They have been bogged down some recently.

Q. With respect to the breakdown and breakdowns of equipment, what, if anything, would be experienced in that area as a result of the restoration of picket lines?

I have in mind the ability to service the cars that came through Jacksonville, to make whatever repairs and do whatever maintenance work is required.

A. The freight cars—of course that repair work is performed at Moncrief, if we can get the trains into Jacksonville Terminal Company and get them on into Moncrief. [fol. 52] On passenger cars, the Jacksonville Terminal Company performs our maintenance work on the cars that lay over here; and the ones that pass through, they make an inspection for defects and cut out or bad-order the cars that need attention passing through.

So if we did not have the use of the Terminal Company facilities, we would have no way to service or make repairs to the passenger equipment.

Q. Are the services and repairs that are made there normally the type that have an effect on the safety and safe operation of the railroad?

A. It is very important, yes, that the cars be thoroughly inspected and kept in proper operating condition, so that they will not have trouble on the line of road.

Mr. Towers: That is all, Your Honor.

May the witness step down?

The Court: Is there any further cross for this witness?

You may step down, Mr. Andrews.

Are there any further witnesses, Mr. Towers?

Mr. Towers: That is the only one that we have, Your Honor.

[fol. 53] The Court: Mr. Grissett, do you have a witness?

Mr. Grissett: Yes, Your Honor.

W. E. SATTERWHITE, produced and sworn as a material *witness on behalf of the plaintiffs, testified as follows:*

Direct examination.

By Mr. Grissett:

Q. Would you state your name, please?

A. W. E. Satterwhite.

Q. What is your business or occupation?

A. Assistant Superintendent, North Florida Division, Seaboard Railroad.

Q. Mr. Satterwhite, on May 4th, last Wednesday morning, did you have any occasion to observe picket lines?

A. Yes, I saw picket lines as they have been described here before, as to the disposition.

Q. Where did you see the picket lines up?

A. I saw picket lines at Beaver Street, Acorn Street—Church Street—and Stockton Street. In addition to those on Beaver Street, right immediately adjacent to the Terminal Company entrances.

Q. After those picket lines went up, Mr. Satterwhite, what was the attitude of the Seaboard's train crews?

[fol. 54] A. They did not cross the picket lines.

Q. Mr. Satterwhite, how many trains does the Seaboard operate through Jacksonville Terminal Company on a daily basis?

A. Trains and train movements would average 40 a day.

That is 12 regularly scheduled passenger trains, north and south.

Eight freight trains.

And an average of 20 yard engine movements.

Q. What do yard engine movements consist of?

A. They serve the industrial areas that are generally east of the Terminal Company's property, and they serve all of our connections. That is, the Atlantic Coast Line, the Southern, and the FEC.

Q. Those movements in the Jacksonville Terminal Com-

pany, do they have to use the Jacksonville Terminal Company's interlocking plants?

A. Yes, they would use all three of the interlocking plants. The Beaver Street plant, the Myrtle Avenue, and the Lee Street.

Q. In the period from May 1st through May 7, 1966, what was the daily average of cars that the Seaboard handled to and from industrial areas?

[fol. 55] A. 89.

Q. What was the daily average in that period of time of cars handled by the Seaboard on north-south freight trains?

A. 293.

Q. What was the daily average of cars handled in that period of time to and from connecting lines?

A. 399, all of which that we are speaking of now had to go through the Jacksonville Terminal Company.

Q. All of those you have just testified about had to go through Jacksonville Terminal Company?

A. Yes, sir.

Q. Mr. Satterwhite, does the Seaboard handle any United States mail?

A. Yes, sir, a considerable volume.

Q. How does it handle it, coming in and out of Jacksonville?

A. We have six regularly scheduled truck operations from Jacksonville to points south in Florida, and from those points back to Jacksonville.

And we have a daily average of 45 storage mail cars handled in Jacksonville in the Jacksonville Terminal Company; and 10 RPO cars.

Q. All of that that you have been testifying about has [fol. 56] to pass through the Jacksonville Terminal Company facilities?

A. Yes, it does.

Q. Mr. Satterwhite, on last Wednesday morning, were there pickets at Stockton Street crossing of the Seaboard?

A. There were.

Q. Are there any other railroad's tracks over that crossing?

A. No. The Seaboard tracks are the only ones that cross Stockton Street.

Q. Were there also pickets at the crossing of the Seaboard over Acorn Street?

A. Yes, there were.

Q. Are there any other railroads' tracks going over that street? At that point?

A. Not over Acorn. No.

Q. Mr. Satterwhite, to your knowledge, is the Seaboard Air Line Railroad Company now engaged in any labor dispute with any one of the defendant labor organizations in this suit?

A. It is not.

Q. Mr. Satterwhite, to your knowledge, were any of the pickets that you observed last Wednesday morning SAL employees?

[fol. 57] A. To the best of my knowledge, there were no SAL employees picketing.

Mr. Grissett: No further questions.

Cross examination.

By Mr. Milledge:

Q. Is the Seaboard presently interchanging cars with the FEC?

A. Yes, sir.

Q. Has the Seaboard embargoed FEC traffic?

A. No, sir.

Q. Where is the interchange done here between FEC and Seaboard?

A. FEC interchanges to Seaboard in what is known as Honeymoon Yard.

Seaboard interchanges with FEC in YH Yard.

Q. Who owns those yards?

A. The YH Yard is owned by the Jacksonville Terminal Company, I am reasonably certain; and Honeymoon Yard is the property of the Seaboard.

Q. Both of those yards are within the perimeter of the Jacksonville Terminal Company; are they not?

A. The access to both yards, from the east, is from the Jacksonville Terminal Company, yes.

[fol. 58] Q. And is Stockton Street the closest public road crossing to YH and Honeymoon Yards?

A. Yes, it is.

Mr. Milledge: That is all we have.

The Court: All right, you may step down, Mr. Satterwhite.

Mr. Grissett: Mr. Barrett.

CHARLES S. BARRETT, produced and sworn as a material witness on behalf of the plaintiffs, testified as follows:

Direct examination.

By Mr. Grissett:

Q. Will you state your name, please.

A. Charles S. Barrett.

Q. What is your business or occupation, Mr. Barrett?

A. Assistant General Freight Agent, Seaboard Railroad.

Q. Where are you employed by the Seaboard now?

A. In Jacksonville.

Q. Mr. Barrett, does the Seaboard Air Line Railroad furnish rail freight service to industries in Jacksonville and Duval County?

[fol. 59] A. They do.

Q. Where are those industries generally located, Mr. Barrett?

Can you give us an indication of where they are?

A. Mostly east and north of the Terminal properties and west of our West Jacksonville Yard.

Q. In order for the Seaboard to furnish rail freight service to those industries which lie east and north of the Jacksonville Terminal Company, is it necessary to pass

through the Terminal Company yard for those switching movements?

A. Yes, it is.

Q. Mr. Barrett, I hand you a sheet which has at the top of it "Schedule A", and ask you to please examine it.

What does that document list?

A. It is a list of industries that are located along the Jacksonville Terminal Company's tracks in Jacksonville.

Q. Are those industries which are serviced by Seaboard Air Line Railroad Company?

A. They are serviced—part of them are serviced by us, and part of them are serviced by the Jacksonville Terminal Company for our account.

[fol. 60] Mr. Grissett: We would like to offer this as defendant Seaboard's Exhibit No. 1 in evidence.

Mr. Milledge: That is all right.

The Court: Without objection, it will be received in evidence as Plaintiff Seaboard's Exhibit No. 1.

The instrument above referenced was received and filed in evidence, without objection, as Plaintiff Seaboard's Exhibit No. 1.

By Mr. Grissett:

Q. Mr. Barrett, I now hand you three sheets. On the top of the first sheet it is entitled "Schedule B".

Would you please examine that.

What is that a list of?

A. This is a list of industries that are located north and east of the Jacksonville Terminal Company property, served by the Seaboard Railroad.

Q. Is it necessary to pass through the Jacksonville Terminal Company property in switching movements in order to service those industries?

A. Yes, it is.

Mr. Grissett: I would like to offer that as plaintiff [fol. 61] Seaboard's Exhibit No. 2 in evidence.

Mr. Milledge: No objection.

The Court: Without objection, it will be received in evidence.

Thereupon, the instrument above referenced was received and filed in evidence, without objection, as Plaintiff Seaboard's Exhibit No. 2.

By Mr. Grissett:

Q. Mr. Barrett, through the rail freight service to those shippers which are listed in Exhibits No. 1 and No. 2 just introduced in evidence, what is the average monthly freight income for the Seaboard from freight service furnished to those shippers on those two schedules?

Mr. Rutledge: Your Honor, may I object. I think the question is improperly phrased. He is referring to exhibits in the record, and No. 1 is the map; isn't it?

Mr. Grissett: The plaintiff Seaboard's Exhibits No. 1 and No. 2.

The Court: All right. You may answer the question. [fol. 62] Proceed.

By Mr. Grissett:

Q. Would you answer the question?

A. We would average Seaboard net income of about $320,000 per month.

Mr. Grissett: I have no further questions.

Mr. Rutledge: We have no questions.

The Court: All right, you may step down, Mr. Barrett. All right, the next witness.

Mr. Grissett: That is all we have.

The Court: All right. You may proceed, Mr. Milledge.

RAYMOND W. WYKOFF, produced and sworn as a material witness on behalf of defendants, testified as follows:

Direct examination.

By Mr. Milledge:

Q. Will you state your name, please.

A. Raymond W. Wykoff.

Q. And are you an officer of the Florida East Coast [fol. 63] Railroad?

A. Yes, I am.

Q. What position do you hold?

A. Vice President and Director of Personnel.

Q. And where are your offices, Mr. Wykoff?

A. St. Augustine, Florida.

Q. On the Florida East Coast Railroad, what labor organization represents the crafts of trainmen and yardmen?

A. The Brotherhood of Railroad Trainmen.

Q. And what labor organization represents the craft of conductors?

A. The Order of Railway Conductors and Brakemen.

Q. And what labor organization represents the craft of hostler?

A. The Brotherhood of Locomotive Firemen and Enginemen.

Mr. Towers: Excuse me, Your Honor. I can't hear.

Mr. Milledge: I'm sorry. We just covered the representation.

By Mr. Milledge:

Q. What rules, rates of pay, and working conditions are presently in effect on the Florida East Coast Railroad [fol. 64] for the crafts of trainmen, yardmen, conductors, and hostlers?

A. Rules placed into effect at 12:01 A.M., April 24, 1966.

Q. Now, were those rules placed into effect with agreement or by agreement with the three organizations you have just named that represent these crafts?

Mr. Towers: I object, Your Honor. The best evidence is the agreement itself.

The Court: I will overrule the objection.

The Witness: They were placed into effect in accordance with the procedure of the Railway Labor Act.

The organization had not agreed to them, to the new agreements.

By Mr. Milledge:

Q. Now, were these rules, rates of pay, and working conditions proposals made by the FEC at some earlier date?

A. Yes, they were.

Q. And did the organizations and the Florida East Coast negotiate over these proposed changes and rules, rates of pay, and working conditions?

[fol. 65] A. They did.

Q. And was the matter, was the dispute, submitted to the National Mediation Board?

A. The disputes were, yes.

Q. It is more than one dispute?

A. That is correct.

Q. And what were the docket numbers of those disputes?

A. The trainmen cases were docketed as Case A7257 and A7257, subnumber 1.

The conductors and the hostler cases were docketed as Case A7340.

Q. Now, did the Mediation Board terminate its services in those disputes?

A. It did.

Q. And did it terminate its services for all of those disputes on the same day?

A. Yes, on March 22nd, this year.

Q. 1966?

A. That is correct.

Q. Did the Mediation Board proffer arbitration to the parties to the dispute?

A. It did.

Q. Did the Florida East Coast accept arbitration?
[fol. 66] A. No. Neither did certain of the organizations.
Q. All right. Did the Brotherhood of Railroad Trainmen agree to accept arbitration?
A. The Brotherhood of Railroad Trainmen did, but the other two did not.
Q. And the FEC did not?
A. That is correct.
Q. Now, the Brotherhood of Railroad Trainmen was docketed as a separate dispute from the other two?
A. That is correct.
Q. Now, has an Emergency Board been convened by the President of the United States under the Railway Labor Act?
A. No, it has not.
Q. Would you tell us again what date the Mediation Board terminated its services?
A. March 22, 1966.
Q. And at the expiration of 30 days from that date, what action did the Florida East Coast take?
A. Put the new rules into effect.
Q. And what action did the labor organizations take?
A. They went on strike at 12:01 a.m., April 24th, and sent a telegram the same date saying that they were on strike.
Q. And that was the same time that the rules were [fol. 67] changed?
A. That is correct. The same date.
Q. And the rates of pay and working conditions.

The Court: Does that conclude your direct?
Mr. Milledge: I have just one more question.

By Mr. Milledge:

Q. Mr. Wykoff, where are FEC passenger cars serviced?
A. I understand they are serviced in the Jacksonville Terminal.
Q. And that is the only place you have for servicing passenger equipment?

A. That is correct.

Mr. Milledge: That is all we have, Your Honor.

Mr. Towers: Your Honor, we would like to make a motion as to this testimony, to strike all of it on the ground that it is completely immaterial and irrelevant to the occurrence which is alleged in the Petition that is before Your Honor this morning.

[fol. 68] The Court: I will deny the motion.

Cross examination.

By Mr. Towers:

Q. Mr. Wykoff, which two Unions refused to arbitrate?

A. The Order of Railway Conductors and Brakemen and the Brotherhood of Locomotive Firemen and Enginemen.

Redirect examination.

By Mr. Milledge:

Q. The FEC refused as to all three crafts; is that not correct?

A. That is correct.

The Court: All right, you may step down, Mr. Wykoff. Call the next witness, please.

Mr. Rutledge: The defendants will call Mr. Moore, the Deputy President of the Brotherhood of Railroad Trainmen.

Raymond C. Moore, produced and sworn as a material witness on behalf of the defendants, testified as follows:

Direct examination.

By Mr. Rutledge:

[fol. 69] Q. Mr. Moore, would you state your full name, your home address, your business address, and your title, for the record, please?

A. Raymond C. Moore, 1629 Pierce Street, Aliquippa, Pennsylvania.

Our business address, 666 Euclid Avenue, Cleveland, Ohio.

The Court: Mr. Moore, will you speak up a little louder and sort of address your remarks to me. I am the one you are talking to primarily.

The Witness: Yes, sir.

By Mr. Rutledge:

Q. What is your title, Mr. Moore?

A. Deputy President, Brotherhood of Railroad Trainmen.

Q. Mr. Moore, were you present here in Jacksonville last week, on May 4th, 1966?

A. Yes, sir.

Q. Did you have any personal knowledge—do you have any personal knowledge, concerning the pickets that were placed around the perimeter of the Jacksonville Terminal on that date?

[fol. 70] A. Yes, sir.

Q. Would you tell the Court what your personal knowledge is and how it was gained?

A. Yes, sir. They were BofRT members, or employees, working under the jurisdiction of their craft and class, which we represent.

Q. Now, were these pickets former employees, or, rather, striking employees of the Florida East Coast Railroad?

Mr. Adams: Excuse me. I can't hear the witness.

Mr. Rutledge: He has a light voice, Your Honor.

The Court: I know he has a light voice.

Speak as loud as you can, Mr. Moore, so that everyone can hear.

Mr. Adams: Would you repeat that question?

The Reporter:

"Now, were these pickets former employees, or, rather, striking employees of the Florida East Coast Railroad?"

[fol. 71] The Witness: Yes, sir.

Mr. Adams: I wanted to go back—you asked him if he had personal knowledge of the placing of the pickets.

Mr. Rutledge: Yes.

Mr. Adams: Would you ask him that?

By Mr. Rutledge:

Q. Did you have personal knowledge of the placing of those pickets?

A. Yes, sir.

Q. Was that done under your immediate and direct supervision?

A. Yes, sir.

Q. Now, specifically concerning the Order of Railway Conductors, were any of those pickets members of the Order of Railway Conductors, or operating under the jurisdiction of the Order of Railway Conductors?

A. None that I know of.

The Court: I am not certain that I understood the [fol. 72] question.

Was any member of the Order of Railway Conductors among the pickets, to your knowledge?

The Witness: They were not.

The Court: All right, proceed.

By Mr. Rutledge:

Q. Were any of the pickets members of the Brotherhood of Locomotive Firemen and Enginemen?

A. None were members of the Brotherhood of Locomotive Firemen and Enginemen.

The Court: They were all BRT employees?

The Witness: They were BoRT employees.

The Court: Employees of the FEC?

The Witness: Yes, sir.
The Court: All right.
The Witness: If I may qualify: We were most careful [fol. 73] about that.

By Mr. Rutledge:

Q. Is it correct to say that the picketing that was done on May 4, 1966, that is here involved, was done exclusively by the Brotherhood of Railroad Trainmen and its members?
A. Yes, sir.

Mr. Rutledge: No further questions.
Mr. Towers: May we have a recess for about five minutes?

(At this point there was a brief discussion off the record.)

Mr. Rutledge: May I ask one more question, before we take the recess?
The Court: All right, you may ask the question.

By Mr. Rutledge:

Q. Mr. Moore, if the Jacksonville Terminal Company ceases to provide services on a day-to-day basis for the FEC and ceases to handle movement of FEC trains on its property, will those pickets be removed voluntarily?
[fol. 74] A. Yes, sir.

The Court: Read that question again, Mr. Reporter.

The Reporter:

"Q. Mr. Moore, if the Jacksonville Terminal Company ceases to provide services on a day-to-day basis for the FEC and ceases to handle movement of FEC trains on its property will those pickets be removed voluntarily?
"A. Yes, sir."

Mr. Milledge: That was on the assumption that they would be put back.

The Court: I understand.

The Court will be in recess at this time until 2:15.

[fol. 75] . . . Upon resumption of the hearing after the recess above indicated, the following further proceedings were had:

Cross examination.

By Mr. Towers:

Q. Mr. Moore, now what is your position with the Brotherhood of Locomotive Trainmen—Railroad Trainmen?

A. I was delegated by them to represent them in mediation proceedings.

Q. Do you hold an office in the Brotherhood?

A. Which Brotherhood?

Q. The Brotherhood of Railroad Trainmen?

A. Yes, sir.

Q. What is that office?

A. Deputy Vice President.

Q. And that is on a national level; is that right?

A. Yes, sir.

Q. That is the Brotherhood of Railroad Trainmen that all of the Local Brotherhoods of Railroad Trainmen are affiliated with; is that correct?

A. Yes.

Q. All right, sir. Now, do you hold offices in other Brotherhoods also?

A. No, sir.

[fol. 76] Q. That is the only one that you hold an office in on a national level; is that right?

A. Yes, sir.

Q. Have you been delegated by other Brotherhoods to do the same thing for them that you have been doing—have

been delegated to do for the Brotherhood of Railroad Trainmen?

A. On occasions.

Q. And in this particular instance—I think I asked you what your position was, and you said you had been delegated to do what?

A. To represent the Firemen in mediation proceedings.

Q. All right, sir.

Have you been delegated to represent anyone else at this time?

A. No, sir.

Q. At other times, you have been; is that correct? Other times, you have been? So delegated?

A. Yes, sir.

Q. Now, does the Brotherhood of Railroad Trainmen have an independent contract with the Atlantic Coast Line Railroad Company?

A. Yes, sir.

Q. I will ask you, that contract is at this time in full [fol. 77] force and effect, isn't it?

A. To my knowledge, it is.

Q. And you probably have as much knowledge on that question as anyone with the Brotherhood; do you not?

A. No, sir.

Q. There are others who know more about it than you?

A. Yes, sir.

Q. But you are what we might say is a knowledgeable person in the area; is that right?

A. I wouldn't speak for the Atlantic Coast Line.

Q. Sir?

A. I wouldn't speak for the situation on the Atlantic Coast Line.

Q. I see. But, as you say, as far as you know, this independent contract that you say the Brotherhood of Railroad Trainmen has with the Atlantic Coast Line Railroad Company is presently in full force and effect; is that right?

A. To my knowledge, it is.

Q. All right, sir. Now, at this time there is no dispute etween the Brotherhood of Railroad Trainmen and the tlantic Coast Line Railroad Company for which that rotherhood is now striking; is there?

A. In this specific case, no.

ol. 78] Q. Sir?

A. In this specific—what I am assigned to, no.

Q. All right, sir. But the answer to the question is o"? Is that right?

A. Well, I wouldn't say there isn't any dispute that ists between the Atlantic Coast Line and this Brotherood, because I am not the officer assigned to that railroad.

Q. All right.

A. And I cannot answer.

Q. Do you know whether they are on strike?

A. No. They are not on strike.

Q. All right. Now, listen to the question again:

There is no dispute between the Brotherhood of Railroad rainmen and the Atlantic Coast Line Railroad Company r which that Brotherhood is now on strike, is there?

A. To my knowledge, there isn't any.

Mr. Towers: I think that's all.

The Court: Is there any further cross, Mr. Adams?

Further cross examination.

By Mr. Adams:

ol. 79] Q. Mr. Moore, likewise does not the Brotherood have an independent contract with the Jacksonville erminal Company?

A. I would say yes.

Q. And, again, I will ask you the same question that Mr. owers did:

Isn't it a fact that that contract is presently in full force d effect?

A. To my knowledge, it is.

Q. And I will ask you the further question: To your knowledge, is there any dispute existing between Jacksonville Terminal Company and the Brotherhood, for which the Brotherhood is on strike?

A. To my knowledge, there isn't.

Mr. Adams: That's all.

The Court: Mr. Grissett?

Further cross examination.

By Mr. Grissett:

Q. Mr. Moore, does the Brotherhood of Railroad Trainmen have an independent contract with the Seaboard Air Line Railroad?

A. To my knowledge, it does.

[fol. 80] The Court: What is that answer?

The Witness: To my knowledge, it does.

By Mr. Grissett:

Q. Mr. Moore, is that contract presently in full force and effect?

A. To my knowledge, it is.

Q. Does the Brotherhood of Railroad Trainmen now have any dispute with the Seaboard Air Line Railroad for which they are now on strike?

A. None that I know of.

Q. Now, Mr. Moore, I would like you to look at one of those pictures that is attached to the Complaint.

A. Yes, sir.

Q. Can you tell by looking at that what this is a picture of, Mr. Moore?

A. It is a picture of a picket; a member of the Brotherhood of Railroad Trainmen.

Q. Mr. Moore, under this tape which you see on the sign which the picket is carrying are there the initials ORC&B or BLF&E, or both?

. Both.
. 81] Mr. Grissett: Both. Thank you, sir.

Ir. Rutledge: May we identify in the record that this is
iotograph marked "C" attached to the Complaint.
he Court: Yes. And let me see the photograph, please.
Ir. Grissett: I would like to ask one more question.

By Mr. Grissett:

. Mr. Moore, what do the initials "ORC&B" mean?
at do they stand for?
. Order of Railway Conductors and Brakemen.
. What do the initials "BLF&E" stand for?
. Brotherhood of Locomotive Firemen and Enginemen.
. Are those two Brotherhoods presently on strike
inst the Florida East Coast Railway?
. Against the Florida East Coast Railroad, yes, sir.

Ir. Grissett: Thank you, sir.
Ir. Rutledge: We have no further questions, Your
ior.
he Court: You may step down, Mr. Moore.
all the next witness.

. 82] NEIL G. JENKINS, produced and sworn as a
erial witness on behalf of the defendants, testified as
ows:

Direct examination.

By Mr. Milledge:

Would you state your name, please.
Neil Gray Jenkins.
And where do you reside?
3915 Trout River Boulevard, Jacksonville, Florida.

The Court: What are your initials, Mr. Jenkins?
The Witness: N. G.
The Court: All right, continue.

By Mr. Milledge:

Q. By whom are you employed?
A. The Atlantic Coast Line Railroad.
Q. And in what capacity?
A. As a Yard Foreman.
Q. Do you hold any official capacity with the Brotherhood of Railroad Trainmen?
A. I am Local Chairman of the Yard Service employees of the Atlantic Coast Line who hold membership in the [fol. 83] Brotherhood of Railroad Trainmen.

The Court: Mr. Reporter, read that back to me, please.

The Reporter:

"I am Local Chairman of the Yard Service employees of the Atlantic Coast Line who hold membership in the Brotherhood of Railroad Trainmen."
The Court: Thank you.

By Mr. Milledge:

Q. Do the men who work in yard service in Moncrief Yard come within your jurisdiction?
A. Yes, sir.
Q. Now, in Moncrief is an ACL switching yard; is it not?
A. The largest terminal on the Coast Line Railroad.
Q. And in that facility is interchange made between the Florida East Coast and the Atlantic Coast Line Railroad?
A. Daily.
Q. Do FEC trains, engines and crews, come into Moncrief Yard?
A. Yes.
[fol. 84] Q. And all of Moncrief is ACL property?
A. Yes, sir. From McQuade Street, west and northwest, I suppose you would say.
Q. Now, do the men whom you represent desire to make interchange with the Florida East Coast Railroad?

Mr. Towers: Just a minute, Your Honor. I object.
The Court: The objection is sustained.

By Mr. Milledge:

Q. Have you received any communication from the men you receive regarding their handling of FEC interchange?

Mr. Towers: Just a minute, Your Honor. I think we have got to be more specific than that. He says "the men you receive".
The Reporter: I think you meant "represent".
The Court: Read that question back, Mr. Reporter, please.

The Reporter:

"Have you received any communication from the men you receive"
—and Mr. Milledge intended to say "represent"—
[fol. 85] "regarding their handling of FEC interchange?"
The Court: The objection is overruled.
Mr. Towers: A further ground, Your Honor. That it would be the grossest type of hearsay.
The Court: It is not hearsay as to whether he has received word from them.
Mr. Towers: Oh! Thank you.
The Witness: Would you repeat the question, please, sir?

By Mr. Milledge:

Q. Have you received communication from the men you represent, who work in Moncrief Yard, regarding the handling of FEC interchange?
A. Yes, sir, by the day—

Mr. Towers: Just a minute. He said he received communication.
The Court: The answer is "yes".
[fol. 86] Mr. Towers: I object to the further response.
The Court: Hold it up when the next question is asked, and then we will hear from counsel.

By Mr. Milledge:

Q. And what have those communications been?

Mr. Towers: As to that, we object, Your Honor, on the previous grounds stated.

The Court: You object to that on the ground that it is hearsay?

Mr. Towers: Yes, sir.

The Court: What is your position on that, Mr. Milledge?

Mr. Milledge: We desire to show that the men who work in Moncrief Yard do not desire to handle FEC equipment and would like to make common cause with their brother employees on the Florida East Coast by refusing to handle FEC equipment and to make interchange with the FEC.

[fol. 87] The Court: I'm going to permit the question. Continue.

Mr. Milledge: Would you read the last question?

The Reporter:

"And what have those communications been?"

The Witness: The ACL yard employees have complained to me or communicated to me on occasions too numerous to list that they do object to handling this interchanged equipment from a strike-bound railroad.

Their reason is based on the ground that we are members—

Mr. Towers: I object to any further response.

The Court: I sustain the objection. It was a responsive answer and that was the end of the answer.

Mr. Milledge: That is all we have.

[fol. 88] The Court: All right. Any cross?

Cross examination.

By Mr. Towers:

Q. Mr. Jenkins, are you familiar with the fact that you, and all the employees of the ACL, and the ACL itself, are

nder a Court injunction from this Judge that commands
s to handle those cars?

Mr. Milledge: Excuse me. We object. That is in the
orm of a conclusion.

The Court: I think that is argumentative. I am aware
f what the record shows.

Mr. Towers: In view of all this "common cause" busi-
ess, I just wondered if he knew.

The Court: Well, I don't think it proves anything if he
oes know it.

Mr. Towers: No further questions.

The Court: Any questions, Mr. Grissett?

fol. 89] Mr. Grissett: No questions.

The Court: Mr. Adams?

Mr. Adams: No questions, Your Honor.

The Court: No further direct, Mr. Milledge?

Mr. Milledge: No, sir.

The Court: You may step down, Mr. Jenkins.
Call the next witness, please.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Milledge: We would proffer, in order to save time,
at if the employees from Jacksonville Terminal and the
eaboard, through their representatives were here, they
ould testify the same as Mr. Jenkins; that they don't
esire to handle the movements of a strike-bound railroad.

Mr. Rutledge: If it can be so stipulated.

Mr. Milledge: If that can be stipulated.

ol. 90] The Court: Can it be stipulated, Gentlemen,
at if they took the stand they would testify to the same
ing?

I think it is reasonably probable that they would.

Mr. Towers: Well, I think it is reasonable, too. I
rongly object to it, the same way I did with this witness.

The Court: Well, your objection is on the record.

Mr. Towers: It doesn't make any difference what they
sire. We are all controlled by contract.

The Court: Your objection is on the record.

Will you so stipulate?

Mr. Grissett: Your Honor, we are willing to agree that that would be the testimony from those witnesses with regard to those two employers.

The Court: All right, the stipulation will be received.

[fol. 91] Mr. Towers: As far as the Atlantic Coast Line, we will stipulate that if they got on the stand that is what they would say. We don't stipulate that these people would desire to do that.

The Court: I have not asked you to so stipulate.

Mr. Adams: The same stipulation as to Jacksonville Terminal Company.

The Court: The purport of it is that, if they took the stand, they would stipulate with reference to their two principals what was stipulated by the Coast Line.

Mr. Towers: That the witnesses would state substantially the same thing.

The Court: That the witnesses would testify substantially the same.

Mr. Towers: I assume Your Honor would object to my question, the same way you did on that witness, about the injunction?

[fol. 92] The Court: Yes. There is no doubt about that.

All right, is there any further testimony?

Mr. Milledge: I would like to have Mr. Jennette and Mr. Andrews called back. We could perhaps get a stipulation as to both on that; that they would both testify that they had not placed an embargo on FEC movements and cars, and so forth.

Mr. Towers: If they did do it, that would be in violation of the Court's injunction.

I will stipulate that they are not in violation of it, that they have carried out the Order of this Court.

The Court: Well, that would be the testimony.

Mr. Milledge: If it can be stipulated that they would testify that way.

The Court: It is a reasonable stipulation.

Mr. Adams: We will so stipulate.

[fol. 93] The Court: All right, the stipulation will be received.

Is there any further testimony, Mr. Milledge?

Mr. Milledge: I don't believe there is any further testimony.

We would like at this time to offer the complete transcript and record of Case No. 63-16, *Florida East Coast* v. *Jacksonville Terminal Company*, which is the injunction proceeding which has been referred to a number of times in these proceedings.

We feel that this record would not be complete without this entire file, and we have a Xerox copy of the testimony and all of the exhibits and pleadings.

Mr. Grissett: Your Honor, we object to the exhibit on the ground that it is wholly immaterial and irrelevant to to the question we have before the Court in this suit for injunction.

As a further ground, the Court is pretty well familiar with what took place in that case anyway, and I don't feel [fol 94] that it adds anything to the situation we have before us in Court today.

The Court: Mr. Towers?

Mr. Towers: Your Honor, I don't feel that this record is any part of our case at all.

We did stipulate last week that Your Honor might take judicial notice of the Operating Agreement that was offered and received in evidence in this prior case; but for us to let that in and adopt all of the testimony in that case and offer it as testimony in this case, I think, would be highly improper.

It may be that after I have read through that record I wouldn't have any objection, but certainly, not knowing what is in that record, I would have to object strenuously to Your Honor's permitting that.

I think it is entirely improper without a stipulation of the parties.

The Court: What is the reason for putting all that in the record?

[fol. 95] Mr. Rutledge: Your Honor, may I reply to that?

The Court: Can't you limit it to the Operating Agreement? Wasn't that admitted in evidence? It was admitted the other day in evidence.

Mr. Towers: Yes, we agreed to that.

Mr. Rutledge: Your Honor, we feel that the entire proceeding is relevant here because, in that situation, it involved the action of the Terminal Company in the face of another strike, the non-op strike back in 1963; where the Jacksonville Terminal Company, in response to that strike, placed an embargo on FEC.

The FEC then sought the temporary injunction from this Court, which is still in effect at the temporary injunction stage.

Now, they are contending in their Brief that they have no alternative here, because of that temporary injunction, but to perform day-to-day work for the FEC.

We respectfully submit to Your Honor that, as the [fol. 96] proceedings in that case will show, they do have a remedy, to come to Your Honor—each of these defendants—each of these plaintiffs here was a defendant in that case—and to ask, in view of the actual picketing going on here, to be relieved from the force of that injunction.

And, as a matter of fact, the record will show, Your Honor, that you expressly left that door open to them, and you said on the record in there, as I recall—and that is why we have the transcript here—that if picketing actually developed, that you would be available to then decide the rights of the parties in the light of the actual picketing situation which did not exist when that temporary injunction was issued.

We submit that the temporary injunction itself is most relevant here because it shows, by the very terms of the injunction, the integrated operation, and how the Jacksonville Terminal Company, on a day-to-day basis, performed struck work for this struck carrier. That is the purpose of it.

Not to adopt any testimony, but to show that this is what has been done.

97] It completes the picture and makes a total pic-
of what is the legal situation of these parties at this

e Court: My opinion is that it would be highly im-
er for it to be admitted on the basis of testimony in
her case, because there was no opportunity, as I recall
or all these counsel to be present and cross-examine,
furthermore it was a different law suit.
. Milledge: Yes, sir.
e Court: But, in case the curiosity of the Court of
eals is aroused in the thing, I am going to overrule
bjection and let it be admitted in evidence.

ereupon, the file in Case No. 63-16, above referenced,
received and filed in evidence as Defendants' Exhibit

. Adams: Your Honor, may I seek some clarification.
understand it, the Jacksonville Terminal Company
not place an embargo. The embargo was placed by
FEC.
98] The Court: Well, the record will speak for
on that.
. Milledge: Certainly.
e Court: Is there any further testimony or any other
its to be offered?
. Milledge: We rest, Your Honor.
e Court: Is there any rebuttal testimony?
. Towers: I want to cover two points.
e of them was that Your Honor takes, as we stipulated
ther day, judicial notice of that Operating Agree-
. And, as I understood it—
e Court: Well, Mr. Towers, isn't the Operating Agree-
actually in evidence here?
. Grissett: No, sir.
99] Mr. Towers: I think what we stipulated to, they
sted that Your Honor take notice of it, and we agreed.
Milledge: It is in the record.
Court: What is that?
Milledge: It is in this record.

The Court: Well, I am thoroughly familiar with the agreement, but if it is in this record the Court of Appeals may have some curiosity about it also. If it is in this record, the Court of Appeals can have a look at it.

Mr. Towers: All right.

The other thing was: As I understand it, everything that has been presented or received in evidence at the hearing on the temporary restraining order is also before Your Honor at this time.

The Court: It is before the Court.

[fol. 100] Mr. Towers: Now, to make sure. There was one letter—I am not sure whether it got marked as an exhibit—it was a letter to various counsel telling them the three Unions that they represented.

The Court: That, I think, was introduced as an exhibit.

Mr. Towers: Fine.

The Court: I read the letter and it was my understanding it was introduced as an exhibit.

The Clerk: It was a copy of a letter dated May 3, 1966.

Mr. Towers: It is an exhibit before you.

The Court: That is an exhibit.

Mr. Towers: Just one minute.

The Court: Gentlemen, I want the record to show, since counsel for defendants were silent, that the previous proceedings are part and parcel of the present proceedings. [fol. 101] I am talking about the one that was held on the 4th.

Mr. Milledge: There were affidavits entered there, which we objected to at that time.

The Court: Well, whatever your objections were. You are not washing out your objections. The objections still stand.

But that record is a part of this record and, I take it, without objection on the part of any counsel.

Mr. Rutledge: That is correct.

Mr. Towers: That is correct.

The Court: All right.

Mr. Towers: Your Honor, that is all that the Atlantic Coast Line has.

Mr. Grissett: Your Honor, the Seaboard would like to proffer in evidence and have marked for identification the affidavits of Fred M. Kimbrough and P. D. Orleman, in [fol. 102] support of its Application for Temporary Injunction.

The Court: All right, Mr. Clerk, mark them for identification.

Those are the ones that I would not permit in evidence.

Mr. Grissett: Yes, sir.

The Court: All right, the affidavits will be marked but will not be received in evidence.

Thereupon, the instruments above referenced were marked for identification Seaboard's (plaintiff Seaboard's) Exhibits 3 and 4.

The Court: Anything for the Terminal, Mr. Adams?

Mr. Adams: The Terminal Company announces closed.

The Court: Now, Gentlemen, I want to hear from you as fully as you think necessary on the question of jurisdiction, which is the point that concerns me; and I don't want to cut you off. As long as you are not repeating yourselves, [fol. 103] I will be happy to hear you.

Now, how much time will you require, Mr. Towers?

Mr. Towers: Your Honor, I think I can say everything I have to say in 20 minutes.

The Court: I want you to have in mind that the Briefs are before me and I have some familiarity with those Briefs, as well as with the cases.

I still am willing to hear you make your oral presentation and want you to do so.

Mr. Grissett?

Mr. Grissett: Your Honor—

Mr. Towers: I have always heard that a good lawyer with a good brief doesn't need to make an argument—

The Court: Well, that might be the part of wisdom here, I don't know. It will depend on how good your argument is.

Mr. Grissett?

[fol. 104] Mr. Grissett: Your Honor, I will not take much time. I will merely supplement Mr. Towers.

The Court: Mr. Adams?

Mr. Adams: My argument will depend on what Mr. Towers says, Your Honor.

The Court: All right.

Mr. Adams: I doubt that I will take more than five or ten minutes.

The Court: And for the defense?

Mr. Milledge: Your Honor, I will argue first for about 15 minutes; then Mr. Rutledge, for 10 minutes or so.

We will cover it as fast as we can.

The Court: All right, Gentlemen. You may proceed.

Mr. Towers: What is the order of our arguments, Your Honor?

[fol. 105] The Court: Well, you can work it out among yourselves. The plaintiffs, it seems to me, should go first.

Mr. Towers: Well, they went first the other day but they were being heard on their Motion to Quash. Your Honor allowed them to go first.

The Court: Well, you still have the burden so I am going to listen to you first.

* * * * * * *

[fol. 139] Excerpt From Argument of Mr. Adams

We referred the Court to the Port Authority case and some of the other cases—to the New York Central case—that it appears that this would not be a minor dispute under the Railway Labor Act and we cannot invoke their procedures. And this is only common sense, too, because what are we going to talk about? We have no dispute.

Counsel for defendants say, and they cite, in 350 Federal (2nd), the *International Brotherhood of Electrical Workers* case—where we don't have any avenue to the NLRB.

So there we are. We have no remedy at all. And it seems to me inconceivable that Congress would impose upon us

the duties of a common carrier and subject us to the liabilities and then, by *the same token*, deny us the relief that we seek.

Finally, the point that Mr. Towers did not comment on is the ownership of the Jacksonville Terminal Company.

We say that the Florida East Coast simply owns a one-fourth interest in the capital stock and that this does not give them any rights to the corporate property.

[fol. 140] It has been developed by testimony that the Terminal Company owns its own property. It owns its own rails. It owns its own railroad equipment. It sets its own day-to-day operations policies. It employs its own employees. It entered into separate labor agreements with the defendant Brotherhoods. And, when you get down to it, the Operating Agreement that everybody is talking about imposes no more on the Jacksonville Terminal Company than the Interstate Commerce Act itself; and the participation of the Florida East Coast in the Jacksonville Terminal Company is certainly infinitesimal with respect to the other railroads.

The Court: What does the record specifically show now with reference to the Order of Railway Conductors and Brakemen and the Brotherhood of Locomotive Firemen and Enginemen?

Nobody from either one of those Unions is picketing here?

Mr. Adams: No, sir. That is true. The testimony has not developed—and I remind Your Honor that when this [fol. 141] strike broke, the only thing we really had was that we knew we had received notice that the three railroads' Unions were on legal strike; we had received the letter, which is in evidence, and that Your Honor has, signed by Mr. Rutledge and Mr. Milledge, to the effect that they represented all three and that they were on legal strike. And we have no other way of knowing who it is.

We say that this really amounts to a threatened strike —and, perhaps I should not say this without conferring with my colleagues,—but I think our position is that, in

the event Your Honor does grant us relief, we would like to amend our Complaint to ask for relief on the ground that this is a threatened strike.

The Court: With reference to those other two.

Mr. Adams: As to those other two; because I concur that there is no evidence as to their actual participation. We, of course, don't know, other than Mr. Moore's statement which we assume is correct.

• • • • • • •

[fol. 148] EXCERPT FROM ARGUMENT OF MR. GRISSETT

Mr. Grissett: Yes, sir. I am saying, Your Honor, that it is one of the exceptions, because, under the definitions, as required in the Act, we don't fit those definitions. We are within that exception to the Norris-LaGuardia Act; because we do not fit, as Mr. Towers read, I believe, within those definitions as set forth in Section 113.

Now, as Mr. Adams and Mr. Towers pointed out to Your Honor, there is no dispute, no labor dispute, as between these three plaintiffs and those defendants, and I would just like to point out to Your Honor the wording of what the Court said in the case of *Brotherhood of Railroad Trainmen* v. *New York Central Railroad Company*:

> "We are here confronted by neither a major nor a minor dispute within the meaning of the Railway Labor Act, nor any labor dispute within the meaning of either the Railway Labor Act or the Norris-LaGuardia Act."

Which is our contention right here.

> "Since, in the instant case, there is no labor dispute [fol. 149] involved neither the Railway Labor Act nor the Norris-LaGuardia Act is applicable."

We contend that that is exactly the situation that we have here, and that Your Honor has the jurisdiction to enter this temporary injunction today.

Thank you.

• • • • • • •

Photo of ACL Commissary Entrance on Water Street [fol. 1]

A



Photo of ACL Commissary Entrance on Water Street [fol. 2] B



Close Up Photo of Striker's Sign at Jacksonville Terminal on West Bay Street [fol. 3] C

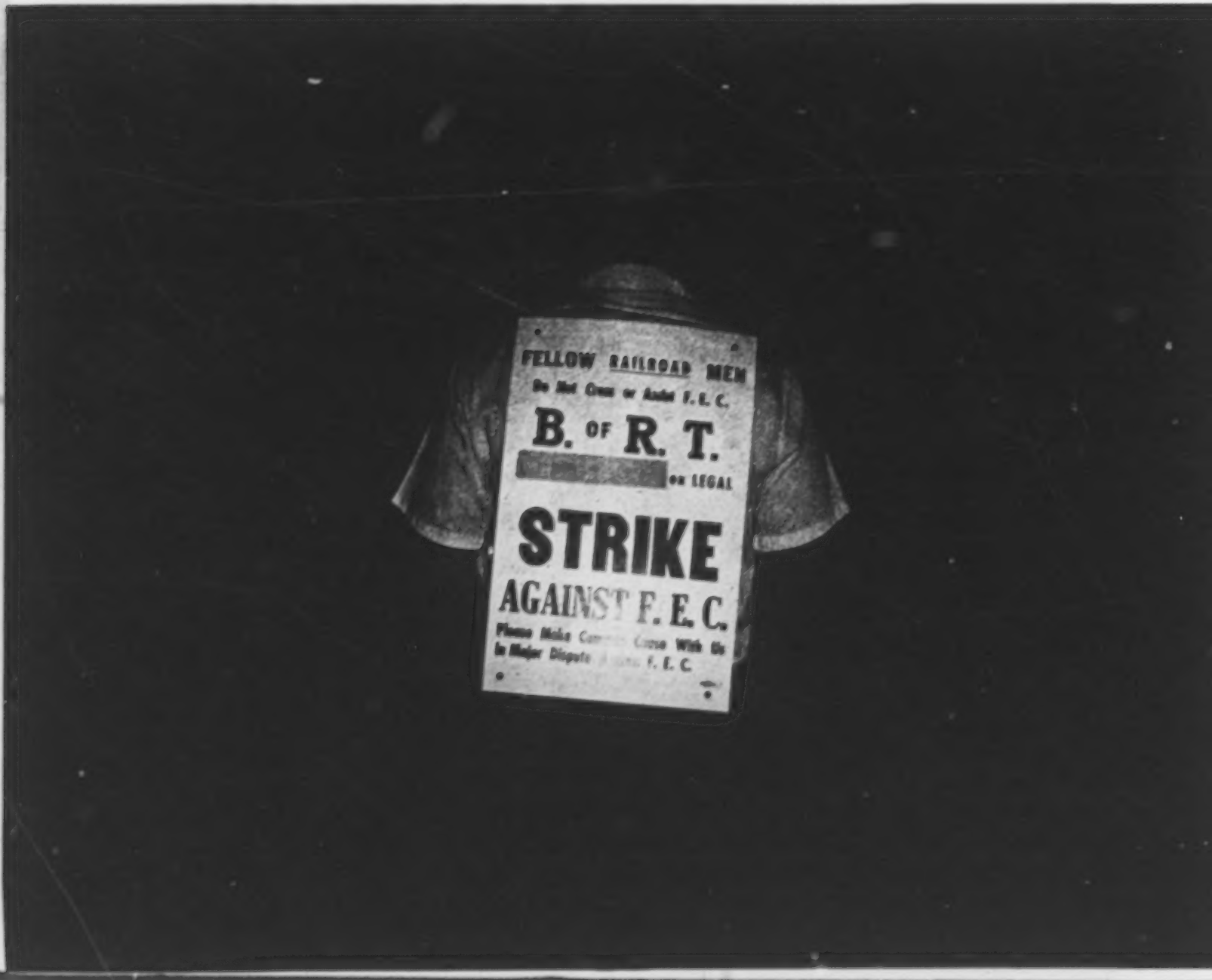


Photo of Striker at Bay Street Passenger Entrance of Jacksonville Terminal Building [fol. 4]

D



Photo of Striker at Bay Street Passenger Entrance of Jacksonville Terminal Building [fol. 5] E

Photo of Striker at Bay Street Passenger Entrance of Jacksonville Terminal Building [fol. 6] F



Photo Showing Three Strikers at Jacksonville Terminal on West Bay Street [fol. 7]



Photo of Employees Entrance for SAL RR, ACL RR, Southern Ry. and Jacksonville Terminal on West Bay Street [fol. 8]



Photo of Striker at Bay Street Passenger Entrance
of Jacksonville Terminal Building [fol. 9] I

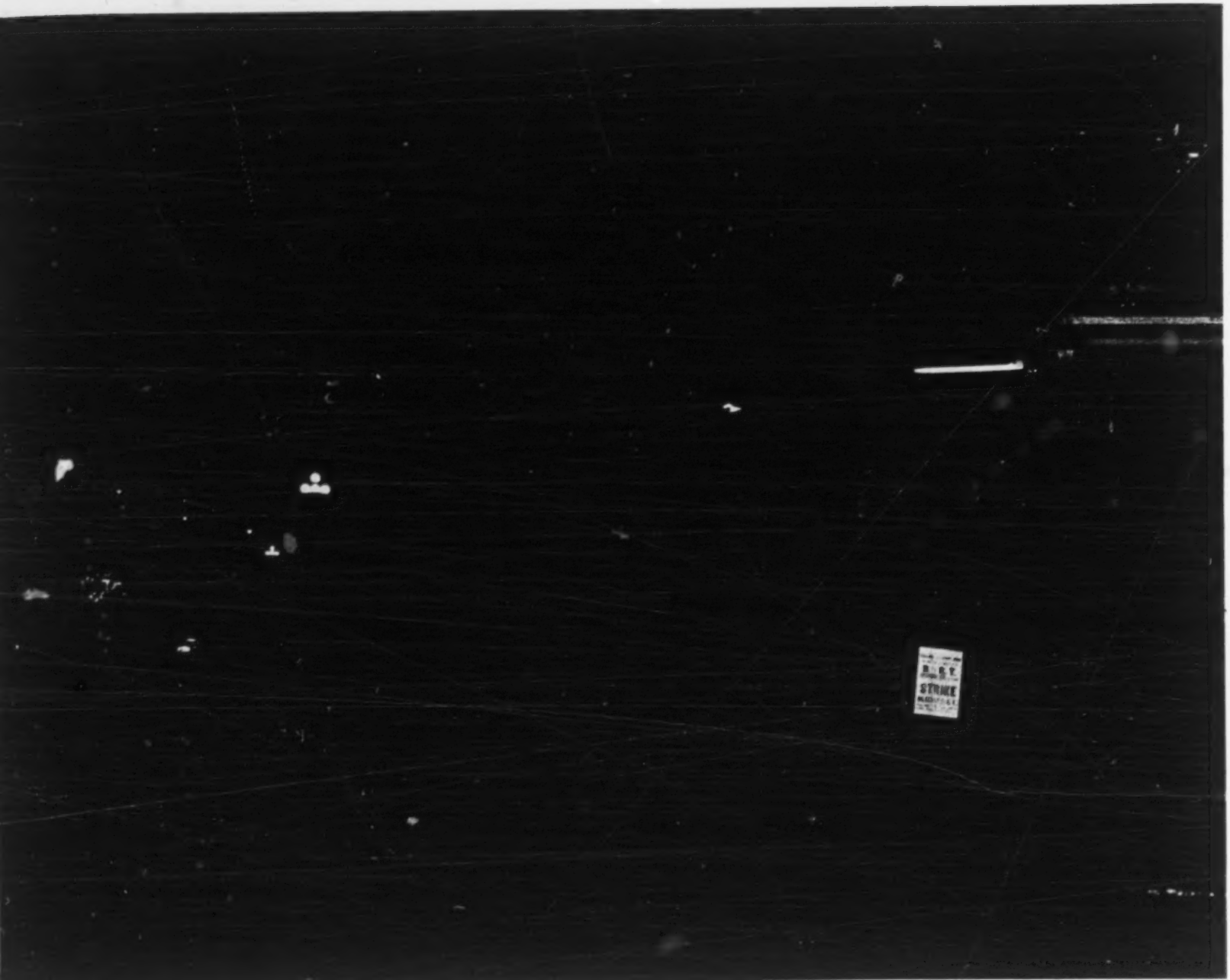


Photo of Employees Entrance for SAL RR, ACL RR, Southern Ry. and Jacksonville Terminal on West Bay Street [fol. 10]

J



Photo at Bay Street and Stuart Street Showing Entrance for Employees of the Florida East Coast Railway [fol. 11] K



Photo at Bay Street and Stuart Street Showing Entrance for Employees of the Florida East Coast Railway [fol. 12]

L



Photo of Church Street Crossing With Jacksonville Terminal Property in Background [fol. 13] M



Photo of Church Street Crossing With Jacksonville Terminal Property in Background [fol. 14]

N



Photo of Mail Delivery for Jacksonville Terminal
on West Bay Street

[fol. 15]



Photo of McQuaid Street Crossing and Jacksonville Terminal Tracks [fol. 16] P

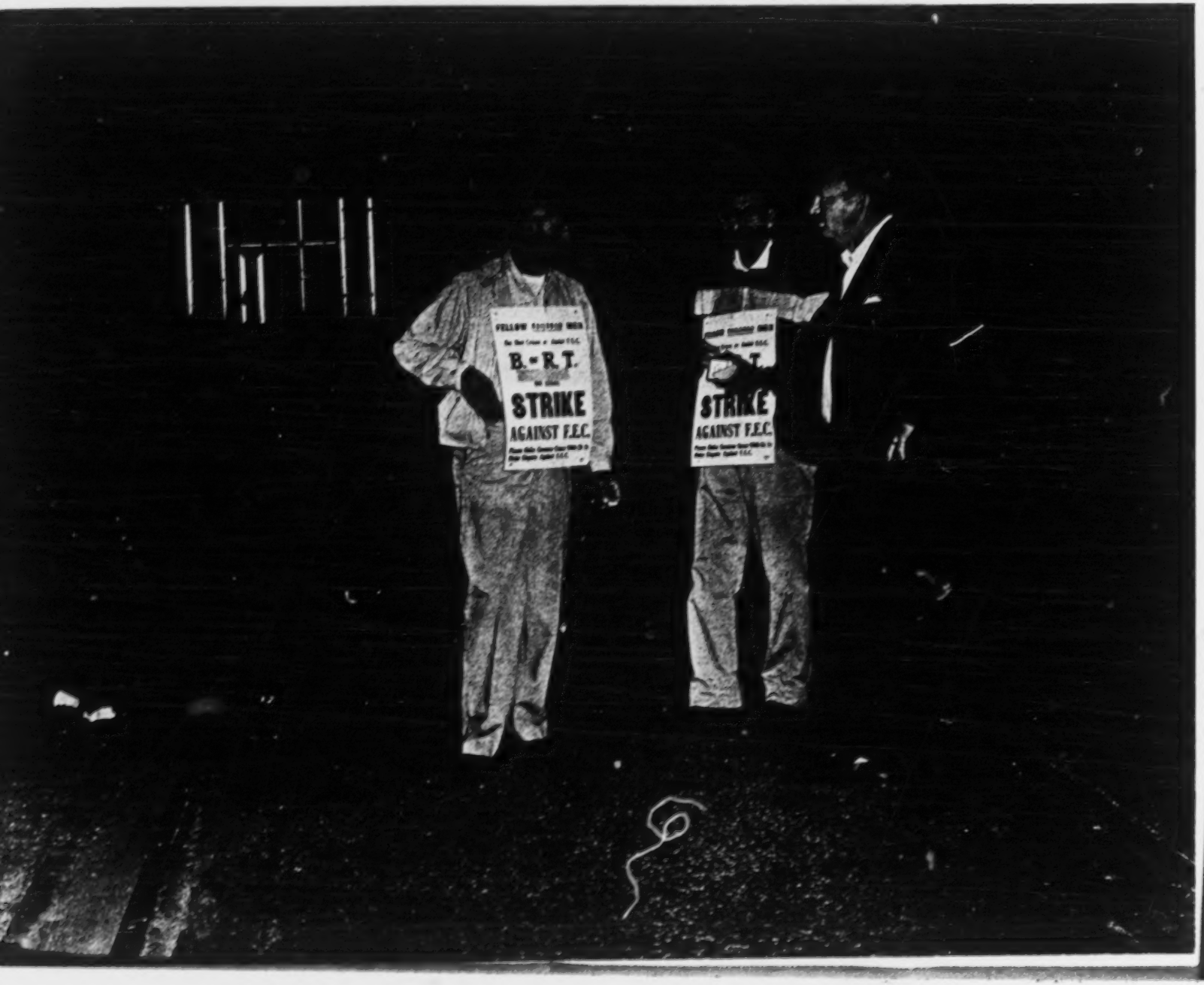
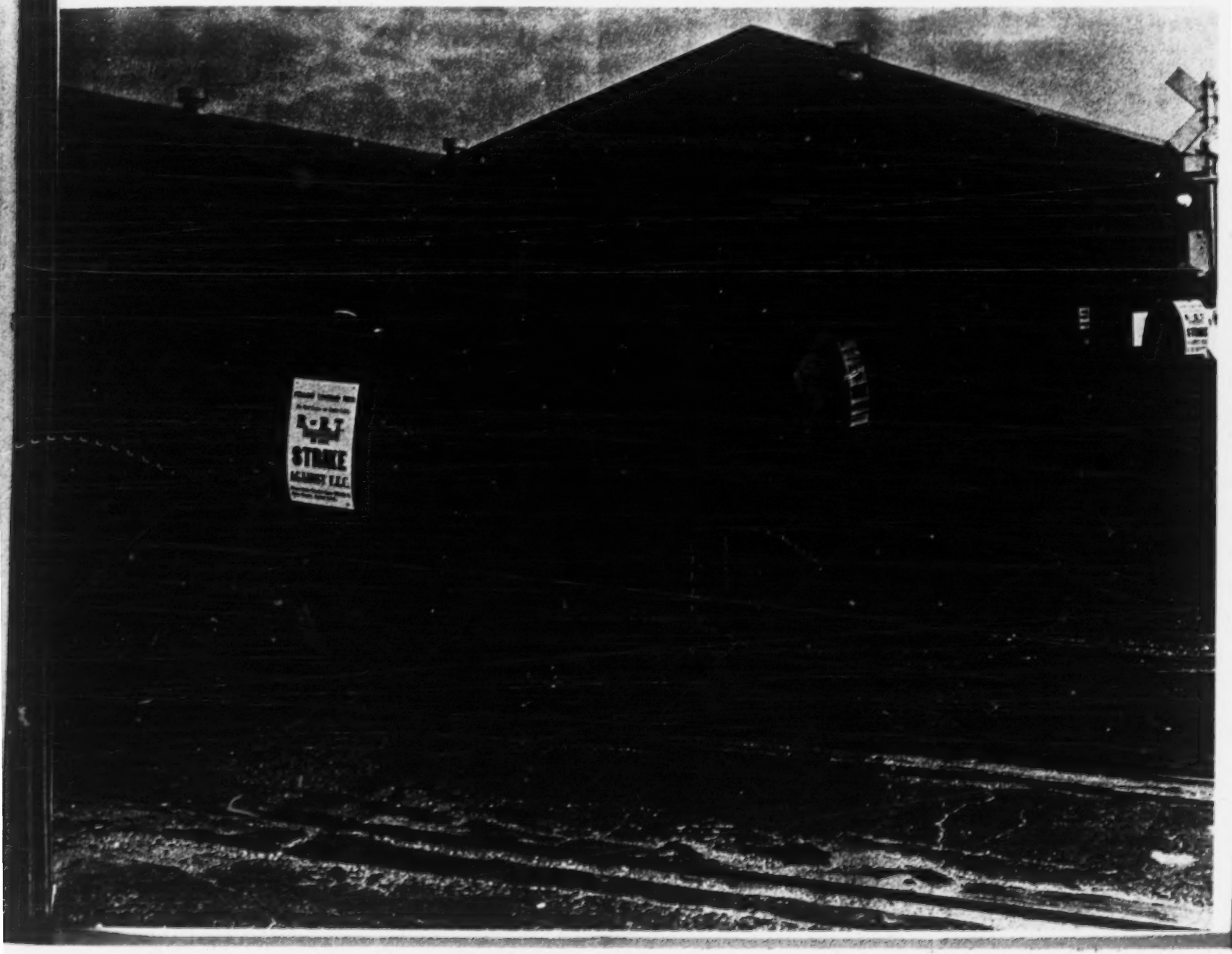


Photo of Strikers at Stockton Street Crossing [fol. 17] Q



Dennis Street Crossing Showing Jacksonville Terminal Property in Background [fol. 18] R



[fol. 20]

PLAINTIFFS' EXHIBIT No. 2

(Letterhead of Rutledge and Milledge,
Miami, Florida 33132)

May 3, 1966

TO THE HONORABLE JUDGES FOR THE
FOURTH JUDICIAL CIRCUIT IN AND
FOR DUVAL COUNTY, FLORIDA:

May It Please The Court;

On April 24, 1966, the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brakemen, and the Brotherhood of Locomotive Firemen and Enginemen went on legal strike against the Florida East Coast Railway Company under the Railway Labor Act, 45 United States Code Section 151, et seq. While no litigation has yet arisen from this controversy, there is always the possibility in labor cases that litigation may be instituted and a hearing sought on short notice or without notice to the opposing party.

The purpose of this letter is to advise Your Honors that the three above labor organizations are represented by the following attorneys who can be reached at the George Washington Hotel, Jacksonville, Florida (Room 716, telephone 355-8811):

Neal Rutledge
Allan Milledge
Tom McAliley

These attorneys are available to appear on behalf of any of their clients in any court proceedings that may be instituted on telephone notice or any other appropriate short notice at any time of the day or night, and would respectfully request an opportunity to be present and be heard at any temporary restraining order or injunction hearing

PREVIOUS FOL
LARGE FOR FI

or other emergency hearing that may be sought arising out of the FEC Railway Company dispute.

Respectfully submitted,

RUTLEDGE & MILLEDGE
601 Flagler Federal Building
Miami, Florida 33132

By: /s/ NEAL RUTLEDGE

BECKHAM & MCALILEY
1010 Concord Building
Miami, Florida

By: /s/ THOMAS W. MCALILEY

[fol. 21]

PLAINTIFF'S (SEABOARD) EXHIBIT NO. 1

SCHEDULE A

(List of Industries located along the Jacksonville Terminal Company Tracks in Jacksonville.)

A & P Bakery Department
All State Pipe Supply Company
Allied Chemical
Atlantic Beer Company
The Atlantic Company
Bercleve Concrete Products and Supply Company
Birdseye-Snider Division of General Foods
Borden Southern Company
Chitty & Company
W. H. Clark Fruit Company
Cosco Products Company
George P. Coyle & Sons
Crane Supply Company
Dixie Galvanizing and Tank Company
Duval Steel Construction Company

.DOUTS TOO
ILMING

Florida Rag Company
Harbor Plywood Company
Jacksonville Steel Company
Jacksonville Terminal Company
Knighton Lumber Company
Precast Concrete Products Incorporated
Public Quick-Freezing and Cold Storage Company
Pullman Company
Railway Express Agency, Incorporated
Security Mills of Jacksonville, Incorporated
Specialty Tank & Equipment Company

[fol. 22]

PLAINTIFF'S (SEABOARD) EXHIBIT No. 2

SCHEDULE B

(List of Industries located north and east of the Jacksonville Terminal Company property, served by the Seaboard Railroad)

A&P Pre-Package Products Warehouse
Allied Chemical Company—Nitrogen Division
Allison Transfer Company
Alton Box Board Company (Pulpwood only)
Paper Products Division
American Celcure Wood Preserving Corporation
American Cross Arm Company
American Mineral Spirits Company
American Warehouse Company
Armour Agriculture Chemical Company
Atlantic Fire Brick and Supply Company, Inc.
Atlantic Refining Company
Beaver Iron and Metal Company
Bond Howell Lumber Company
Boswell Supply Company
Capitol Concrete Company—Plants 1 and 4
C. I. Capps Company, Incorporated
Carbide and Carbon Chemicals Company

Champion Packages Company—Souther Paper Box Division
Clark & Lewis
Commercial Metals Company
Commercial Roof Decks of Jacksonville
Crusader Paper Company
Curtiss Candy Company
Darby Lumber Company
Dawkins Building and Supply Company
Daylight Grocery Company
Dixie Darling Bakery
Dozier & Gay Paint Company
Farris Brothers Grocery
Hymie Fialkow Company
J. M. Fields Company
Fleco Corporation
Florida Agricultural Supply Company
Florida Caskets Company
Florida Ice Machinery Corporation
Florida Machine & Foundry Company
Florida Molasses Company
Florida Publishing Company
Florida State Board of Health
Florida Warehouse Corporation
Food Fair Stores, Setzers Bakery Division
French Mirror and Plate Glass Company
Fulton Distributing Company
General Paper Company
E. G. Golder Company
Graham Jones Paper Company
Bascom Hardee Company
Hester Plow Company, Inc.
Houdaille-Duval Incorporated
Ingram Construction Company
[fol. 23]
International Mineral and Chemicals
City of Jacksonville Pole Yard
City of Jacksonville Power Plant, North Shore

Jacksonville Port Authority
Jacksonville Produce Market (Beaver Street)
Jacksonville Shipyards, West Bay Street
Kaiser Gypsum Company, North Shore
Kellogg Sales Corporation
King Warehouse Company
Laney & Duke Storage Warehouse, Bay Street
Livingston & Thebault Oil Company, Inc.
E. B. Malone Company
Maxwell House Division of General Foods
McCormick Concrete Company
McGiffen & Company
Mid State Steel and Wire Company
Benjamin Moore Paint Company
Moore Dry Kiln Company
Mosaic Tile Company
E. C. Newsome Furniture Company
Newton School Equipment Company
Patterson Cold Storage Company
Phillips Petroleum Company
Pic-&-Save Company
Pittsburgh Plate Glass Company
Morris Portnoy Company, Produce
Pyrofax Gas Company, Division of Union Carbide & Carbon Company
Quality Oil Company
Ralston Purina Company
Reliatex Incorporated
Ring Power Corporation
Riverside Mattress Company
St. Johns Warehouse and Forwarding Company
Sealite, Incorporated
Service Warehouse Company
Sinclair Refining Company
Shuman Cash Building Supply Company
Simplex Paper Company
Southeastern Rail and Steel Company
Southern Bakeries Company

Southern Rag and Waste Company
Southern Shipping Company
St. Regis Paper Company (and 2 box plants)
Southern States Oil Company
Southern Wholesale Furniture Company
Standard Oil Company
Steward-Mellon of Jacksonville
Streitman Biscuit Company
John H. Swisher & Sons Incorporated
TMT Trailer Ferry Company
Textile Paper Products Company
Union Terminal Warehouse Company
U. S. Navy Fuel Depot
[fol. 24]
Virga's Pizza Crust Company of the South
Virginia-Carolina Chemical Corporation
Western Electric Company
Williamson Feed Mills
C. G. Willis Barge Line
Wilson-Toomer Fertilizer Company
Zonolite Division of W. R. Grace Company

[fol. 25]

PLAINTIFF'S (SEABOARD) EXHIBIT NO. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
No. 66-357-Civ-J.

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation, et al.,

Plaintiffs,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, et al.,

Defendants.

AFFIDAVIT OF P. D. ORLEMAN

STATE OF FLORIDA)
COUNTY OF DUVAL)

Before me, the undersigned authority, this day personally appeared P. D. ORLEMAN, who, being by me first duly sworn, says:

1. That affiant is a plant manager of the Kaiser Gypsum Company, Inc., a corporation, at its Jacksonville, Florida, plant. That by reason thereof, affiant is familiar with and has personal knowledge of the matters and things hereinafter set forth.

2. That the Kaiser Gypsum Plant at Jacksonville is served only by the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railroad Company by rail freight traffic. That the Kaiser Gypsum Plant at Jacksonville moves approximately 85% of its inbound and outbound [fol. 26] freight shipments by rail; that its inbound shipments consist of raw materials, basically paper, starch,

and glass fibers, and its outbound shipments are finished materials consisting of gypsum board and plaster.

3. That the Kaiser Gypsum Plant at Jacksonville monthly ships approximately 125 to 150 freight carloads both in and out of its plant by rail.

4. That a cutoff of rail traffic service to the Kaiser Gypsum Plant in Jacksonville would necessitate the plant's shutdown within three days from the receipt of the last rail freight traffic; that its customer service on outbound shipments would have to be shut down after the first day of a cutoff of rail freight service.

5. That a shutdown of the Kaiser Gypsum Plant at Jacksonville would necessitate the layoff of 62 or 63 employees of the plant. That Kaiser Gypsum Company, Inc., in its Jacksonville operations would sustain a loss of approximately $2,500.00 per day if it was necessary to shut down the said plant.

6. That a shutdown of rail freight traffic to the Kaiser Gypsum Plant at Jacksonville would result in irreparable harm and injury to the Kaiser Gypsum Company's operations in Jacksonville.

/s/ P. D. Orleman
P. D. Orleman

Sworn to and subscribed before me this May 9, 1966:

/s/ Carlie C. Kurz
Notary Public State of Florida at Large.
My Commission Expires: 7-5-66

(Seal)

[fol. 27] I do certify that copies hereof have been furnished to Rutledge & Milledge, Beckham & McAliley, and Horton & Schwartz, Attorneys for Defendants, by delivery this May 9, 1966.

.....
Attorney.

[fol. 28]

PLAINTIFF'S (SEABOARD) EXHIBIT NO. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
No. 66-357-Civ-J.

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation, et al.,
Plaintiffs,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, et al.,
Defendants.

AFFIDAVIT OF FRED M. KIMBROUGH

STATE OF FLORIDA)
COUNTY OF DUVAL)

Before me, the undersigned authority, this day personally appeared FRED M. KIMBROUGH, who, being by me first duly sworn, says:

1. That affiant is Regional Traffic Manager for St. Regis Paper Company, a corporation, and has his office at St. Regis' Jacksonville Mill. By reason thereof, affiant is familiar with and has personal knowledge of the matters and things hereinafter set forth.

2. That St. Regis Paper Company operates a paper mill on Eastport Road northeast of Jacksonville, Florida; that the only rail freight service available to the St. Regis Paper Company Mill in Jacksonville is over the tracks of Atlantic Coast Line Railroad Company and the Seaboard [fol. 29] Air Line Railroad Company. That 90% of the freight both inbound and outbound from St. Regis' Jacksonville Mill moves by rail.

That St. Regis monthly receives approximately 3,000 ght cars of rail traffic containing mostly wood and wood s to be used in the operation of the mill. That St. Regis thly ships approximately 900 to 1,000 freight carloads rail from the Jacksonville Mill. All of the aforesaid traffic moves over either Atlantic Coast Line Railroad npany or Seaboard Air Line Railroad Company tracks.

That if rail freight service should be stopped to Regis' Jacksonville Mill, it would be necessary to shut n the mill entirely in approximately one and one-half s from the end of said rail freight service. That a tdown of the mill would entail the laying off of ap- ximately 800 employees in the mill and approximately people who work in the field outside of Jacksonville are basically involved in obtaining wood and wood s for the mill.

That a shutdown of rail freight traffic to the St. Regis er Company Mill at Jacksonville would result in ir- arable harm and injury to the St. Regis Paper Com- y's operations in Jacksonville.

/s/ Fred M. Kimbrough
Fred M. Kimbrough

rn to and subscribed
re me this May 9, 1966:

E. Gloria Flaige
Notary Public State of Florida
at Large.
My Commission Expires: Oct. 20, 1968

(Seal)

30] I do certify that copies hereof have been fur- ed to Rutledge & Milledge, Beckham & McAliley, and ton & Schwartz, attorneys for defendants, by delivery, May 9, 1966.

/s/ W. E. Grissett
Attorney.

[fol. A] DEFENDANTS' EXHIBIT "A"

[fol. B]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

No. 63-16-Civ-J

DOCKET ENTRIES

CLOSED

DATE	PROCEEDINGS	PAGE NUMBER
1963		
Jan. 28	Complaint for injunctive and other relief filed.	1-
Jan. 28	Hearing on Application for Injunctive and other Relief in Open Court.	
Jan. 28	Plaintiffs Exhibits 1 & 2 Filed in Evidence. (Enclosed)	
Jan. 28	Motion by Defendants to Deny the Application for Injunction and to dismiss the Complaint—Denied	
Jan. 28	Defendants Exhibits A thru I Filed in Evidence. (Enclosed)	
Jan. 28	Motion by Defendants to Deny the Application for Injunction and to dismiss the Complaint—Renewed—Ruling Reserved	
Jan. 28	Hearing recessed until 1-29-63 at 9:00 A.M. R-23 WAM	
Jan. 28	Praecipe for instanter Subpoena Ad Testificandum and Issuance of same.	
Jan. 29	Hearing Resumed	
Jan. 29	Taken under Advisement by the Court. R-23 WAM	
Jan. 30	Order for preliminary injunction R-23 WAM	48-

		PROCEEDINGS	PAGE NUMBERS
	30	Bond of Plaintiff in amount of $10,000.00 (in-vault)	
	31	motion to stay injunction	58- 59
	31	Motion to increase the amount of the Bond of Plaintiff.	60- 61
	31	Hearing on motion to stay injunction and motion to increase the amount of Bond of Plaintiff in Open Court.	
	31	Motion to stay injunction denied.	
	31	Motion to increase the amount of the Bond of Plaintiff—Denied.	
	31	Notice of appeal by defendants filed.	62- 63
	31	Order denying motions of defendants to stay injunction and to increase bond of Plaintiff. R-23 WAM	64
	5	Copy of order from C/A dismissing appeal pursuant to Rule 20.	65- 66
	11	Agreement and stipulation for dismissal of interlocutory appeal	67- 68
	11	Cert. copy of Order from C/A dismissing appeal R-24	69- 70
	13	Report of hearing upon application for injunction. (As No. by Court Reporter)	
	18	Answer of Defendants Southern Railway Co. and Georgia Southern And Florida Railway Co.	71- 72
	20	Motion to dismiss and answer of Defendants, Atlantic Coast Line Railroad Company and Seaboard Air Line Railroad Co.	73- 78
	25	Motion to dismiss and answer of deft. Jacksonville Terminal Co.	79- 83

DATE	PROCEEDINGS	PAGE NUMBER
1963		
Mar. 21	Motion for leave to serve supplemental complaint by Plaintiff.	84- 8
Mar. 26	Notice of hearing on 3-29-63 at 11:00 A.M. before Hon. Wm. A. McRae, Jr. in main courtroom, Post Office Bldg. Ocala, Florida	86- 8
Mar. 29	Hearing in open Court on Plaintiff's motion for leave to file amended complaint—GRANTED WAM (Ocala)	
Mar. 29	Order granting pltf's. motion for leave to serve supplemental complaint and defts. given until 4-22-63 to file defensive pleadings. R-24 WAM	8
Mar. 29	Supplemental complaint of Florida East Coast Railway Co. filed.	89- 9
Apr. 22	Motion to dismiss by deft. Jacksonville Terminal Corp. and motion to strike.	99-10
Apr. 22	Motion to dismiss by defendant Atlantic Coast Line Railroad and Seaboard Air Line Railroad.	103-16
Apr. 23	Notice of hearing on 4-26-63 at 2:00 P.M. Courtroom #2 before Hon. Wm. A. McRae, Jr.	107-18
Apr. 26	Hearing in Open Court on Defendants' Motions to Dismiss and to Strike WAM	
Apr. 26	Motion by defendants' to dismiss—Taken Under Advisement	
Apr. 26	Motion by defendants' to strike—Taken Under Advisement	
Apr. 26	Counsel submit memorandums of law in Open Court	
Apr. 29	Answer of Southern Railway Co. a corp. and Georgia Southern and Florida Railway Co. a corp.	111-12
*Apr. 29	Order Re: Motions. R-25	109-11

COPY BOUND CLOSE

	PROCEEDINGS	PAGE NUMBERS
8	Motion to alter or amend order granting motions to dismiss supplemental complaint.	113-114
29	Proceedings of 4-26-63 before Hon. Wm. A. McRae.	115-181
C]		
4	Stipulation between parties	182-183
4	Order dismissing with prejudice pltf's. claim for monetary damages; cancellation of bond filed by Pltf. on Jan. 30, 1963 and order for injunction entered Jan. 30, 1963 shall remain in full force etc. R-26 WAM	184-185
20	Petition for Intervention	186-192
20	Motion to Dissolve or Modify or Clarify Order for Preliminary Injunction.	193-195
20	Memorandum of Law in support of Pet'n for Intervention and Motion to Dissolve or Clarify or Modify Order for Preliminary Injunction.	196-205
20	Petitioner's Request for Oral Argument.	206-207
3	Reply to Petition for intervention by Atlantic Coast Line Railroad Co. and Seaboard Air Line Railroad Co.	208-211
7	Memorandum in opposition to Petition for intervention	212-217
8	Law memorandum of the Defts. Atlantic Coast Line Railroad Co. and Seaboard air Line RR Co. in opposition to petition for intervention filed by various labor organizations.	218-224
21	Order denying petition for intervention by labor organizations. R-34 WAM	225

IN CENTER

DATE	PROCEEDINGS	PAGE NUMBER
1965		
Sep. 23	Transcript of hearing on petition for intervention by various labor organizations on 9-20-65 before Hon. Wm. A. McRae, Jr.	226-2
Oct. 20	Notice of appeal to the Court of appeals under Rule 73(b) 28 U.S.C. §1291 by Brotherhood of Locomotive Engineers, et al.	261-2
Oct. 20	Bond on appeal filed.	264-2

[fol. 1]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 63-16-Civ.-J

FLORIDA EAST COAST RAILWAY COMPANY, a corporation,

Plaintiff,

vs.

JACKSONVILLE TERMINAL COMPANY, a corporation, ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, SEABOARD AIR LINE RAILROAD COMPANY, a corporation, SOUTHERN RAILWAY COMPANY, a corporation, and GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY, a corporation,

Defendants.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Florida East Coast Railway Company, a corporation, plaintiff, sues Jacksonville Terminal Company, a corporation (hereinafter called Terminal Company), Atlantic Coast Line Railway Company, a corporation (hereinafter called Coast Line), Seaboard Air Line Railroad Company, a cor-

COPY BOUND CLOSE

poration (hereinafter called Seaboard), Southern Railway Company, a corporation (hereinafter called Southern), and Georgia Southern and Florida Railway Company, a corporation (hereinafter called Georgia Southern), defendants, and alleges:

1. The action arises under Title 28, United States Code, Section 1337, and the Interstate Commerce Act, Title 49, United States Code, Sections 1, et seq., as hereinafter more fully appears.

[fol. 2] 2. All parties are common carriers engaged in the transportation of passengers or property by railroad, within the meaning and application of Title 49, United States Code, Section 1, in interstate commerce. Each is a connecting line with the others for the receiving, forwarding, and delivering of passengers or property, within the meaning and application of Title 49, United States Code, Section 3(4), upon and by use of the facilities for interchange of traffic located in Jacksonville, Florida, and owned and operated by the defendant Terminal Company, which is a corporation wholly owned by the other parties hereto in the following proportions: Plaintiff, one-fourth; defendant Coast Line, one-fourth; defendant Seaboard, one-fourth; defendant Southern, one-eighth; and defendant Georgia Southern, one-eighth.

3. On or about November 10, 1947, the Interstate Commerce Commission of the United States, upon application by all of the defendants and by Scott M. Loftin and John W. Martin, as trustees of the properties of Florida East Coast Railway Company, predecessors in interest of plaintiff, ordered that the defendant Terminal Company be authorized to issue not exceeding $4,000,000 of first mortgage bonds, the proceeds to be applied to the redemption of certain other outstanding bonds; that plaintiff's predecessors and the defendants Coast Line, Seaboard and Southern be authorized to assume obligation and liability, jointly

IN CENTER

and severally, as guarantors in respect of the bonds authorized to be issued by the defendant Terminal Company; and that plaintiff's predecessors and the defendants Coast Line, Seaboard, Southern and Georgia Southern be authorized, for the term of such bonds, to use jointly the passenger and freight terminal facilities of the defendant Terminal Company. The Interstate Commerce Commission found and ordered that the proposed terms and conditions of such joint use were just and reasonable and that the [fol. 3] transaction would be consistent with the public interest. Thereafter, this Court entered in the Matter of Florida East Coast Railway Company, Debtor, No. 4827-J an order dated September 4, 1947, specifically authorizing and directing the Trustees of the Debtor to make and enter into the Operating and Guaranty Agreement hereinafter referred to.

4. Thereafter, on December 1, 1947, pursuant to the authority so granted by the Interstate Commerce Commission of the United States and by the authority so granted by this Court, the parties hereto and United States Trust Company of New York and Frank J. Wideman, as Trustees, made and entered into a written agreement, hereinafter called the Operating and Guaranty Agreement, copy of which is filed herewith and marked Exhibit "A," whereby the defendant Terminal Company, for and in consideration of the covenants by plaintiff and the other defendants agreed:

> "THAT it will, and it hereby does, grant unto the Railway Companies, parties of the second part hereto, and to their respective successors and assigns, severally, the equal right to use in common, for the accommodation of their passenger and freight traffic in the City of Jacksonville, with the right in the Southern Company to include in its use the passenger and freight traffic of the Georgia Company, its successors and assigns,

COPY BOUND CLOSE

"ALL AND SINGULAR, the passenger and freight terminal facilities of the Terminal Company in the City of Jacksonville and State of Florida, including the passenger station building situated on the south side of West Bay Street, and the train sheds, tracks and yards of the Terminal Company in connection therewith, and [fol. 4] all after-acquired property used in connection therewith or in substitution therefor;

"TOGETHER with all the houses, offices, express, baggage and waiting rooms, platforms and appurtenances, and yard, shop and repair and other services, facilities and privileges, of whatsoever nature, to the said station building, tracks and property belonging, or in any wise appertaining, which may be necessary for the movement of trains and the use, comfort and convenience of passengers, and handling of baggage, mail and express, the transportation, movement and switching of loaded and empty freight cars, and the transaction of passenger and freight business at said City of Jacksonville, . . . "

Exhibit "A," p. 5.

Plaintiff and defendants Coast Line, Seaboard, Southern, and Georgia Southern agreed:

"TWENTIETH: That they, the Railway Companies, will use the said station building and passenger facilities and interchange freight yard of the Terminal Company (and no other save as in this Article hereinafter provided), for the handling of all of their passenger train business, including trains containing mail, baggage and express as well as passengers and for the handling of all the freight business interchanged between the parties hereto, or any of them, in the City of Jacksonville for and during the full term hereby created; . . . "

SE IN CENTER

Exhibit "A," p. 24.

[fol. 5] All parties to the Operating and Guaranty Agreement mutually covenanted and agreed:

> "The Terminal Company shall require that the services of all its officers and employees shall be performed without partiality or discrimination as between the Railway Companies."

Exhibit "A," p. 26.

The Operating and Guaranty Agreement has at all times continued in effect, and by its terms, will remain in effect until December 1, 1977.

5. At all times following the execution of the Operating and Guaranty Agreement, until the happenings hereinafter mentioned, the defendants severally accorded to plaintiff and its predecessors, without partiality or discrimination, the equal right to use in common, for the accommodation of passenger and freight traffic in Jacksonville, the tracks, yards, and switching and interchange facilities of the defendant Terminal Company and the services provided by the Terminal Company, including control, movement, distribution, exchange and interchange for the delivery and return of cars used in the transportation of property, hereinafter called "car service." Such use of the facilities and services of the defendant Terminal Company was the normal and necessary course of business and operation by plaintiff and defendants.

6. By reason of the Operating and Guaranty Agreement and by reason of Title 49, United States Code, Sections 1 and 3, it became and was and remains the duty of the defendants

(a) to furnish adequate car service to plaintiff;

(b) to establish, observe and enforce as to plaintiff just and reasonable rules, regulations and practices in respect of car service;

COPY BOUND CLOSE IN

l. 6] (c) not to observe and enforce as against plain- any unjust or unreasonable rule, regulation and prac- in respect of car service;

d) to afford to plaintiff all reasonable, proper and al facilities for the interchange of traffic between the pective lines of the parties hereto and for the receiving, warding and delivering of property to or from con- ting lines; and

e) not to make, give or cause any undue or unreasonable ference or advantage to any party or parties hereto to any other person in any respect whatsoever.

. All conditions have been performed and all events e occurred necessary to entitle plaintiff to continuance such normal course of dealing and to performance by endants of their respective duties hereinabove set forth. defendants Terminal Company, Coast Line and Sea- rd have, nevertheless, violated their duties and plain- 's rights in the following respects and instances:

a) on January 23, 1963, the defendant Terminal Com- y refused to permit plaintiff to deliver cars to the cks, yards, and interchange and switching facilities of defendant Terminal Company and thereafter notified intiff that the defendant Terminal Company will con- ue to prevent plaintiff from delivering cars to the tracks, ds, and interchange and switching facilities of the Ter- al Company;

b) on January 24, 1963, the defendants Coast Line and board notified the defendant Terminal Company that vas their position that the defendant Terminal Com- y should not accept or permit delivery of cars by plain- to the facilities of the defendant Terminal Company, thereafter persisted and still do persist in that posi- ;

[fol. 7] (c) thereafter, the defendants Coast Line and Seaboard gave notice that, even if the defendant Terminal Company should permit plaintiff to deliver cars to the facilities of the defendant Terminal Company for interchange with the defendants Coast Line and Seaboard, those defendants will refuse car service to plaintiff and will refuse to accept such cars at their interchange facilities;

(d) on January 25, 1963, the defendant Terminal Company refused to permit plaintiff to deliver cars to the tracks, yards, and interchange and switching facilities of the defendant Terminal Company for interchange with the defendant Southern, although the defendant Southern was ready, willing and able to accept delivery of such cars and otherwise to provide plaintiff car service. The defendant Terminal Company then and there operated its switching facilities in such manner as to exclude the cars that plaintiff sought to deliver and placed a switch engine at the entrance to the yard in such manner as to block the track upon which plaintiff sought entry.

8. On Thursday, January 24, 1963, counsel for the defendants Coast Line and Seaboard notified plaintiff that on Friday, January 25, 1963, defendants Coast Line and Seaboard would apply to this Court for an order temporarily enjoining and restraining plaintiff from insisting upon its right to use the facilities of the defendant Terminal Company and enjoining and restraining the defendant Terminal Company from permitting plaintiff to use its facilities in providing car service and for other purposes. Thereafter, the defendants Coast Line and Seaboard served on counsel for plaintiff a copy of a proposed complaint for injunction, accompanied by an affidavit by Philip J. Lee, Vice-President of the defendant Coast Line; but before the time set for the hearing before the Honorable Wm. A. McRae, Jr., one of the Judges of this Court, at 11:00 A. M. on January 25, [fol. 8] 1963, counsel for defendants Coast Line and Seaboard notified counsel for plaintiff that the complaint would not be filed and that the hearing would not be held.

COPY BOUND CLOSE IN

. Instead of presenting to this Court or any other tri-
al any contentions on the part of defendants Coast Line
Seaboard that there is a legal basis for refusing to
mit plaintiff to use the facilities and services of the
endant Terminal Company, the defendants Coast Line
Seaboard induced the defendant Terminal Company to
sist in its refusal to permit plaintiff to do so, and the
endant Terminal Company, instead of submitting its
tentions to this Court or any other tribunal for proper
ermination, joined with the defendants Coast Line, Sea-
rd and Terminal Company in committing and engaging
he wrongful and unlawful acts and conduct hereinabove
forth. Thereby such defendants have deprived plaintiff
all opportunity to have the legality and propriety of
h acts and conduct determined by the Court before be-
subjected to the deprivation of its rights as aforesaid.

0. While plaintiff has been and is being denied its rights
er the Operating and Guaranty Agreement and under
Interstate Commerce Act, the defendants continue in all
er respects to carry on their normal course of business
l operations as hereinabove alleged.

1. As a result of such wrongful and unlawful acts on
part of the defendants Terminal Company, Coast Line
l Seaboard, plaintiff has been ousted from its rights as
of the joint owners of the defendant Terminal Com-
ny and its facilities and plaintiff has been deprived of its
hts and prevented from performing its duties under the
erating and Guaranty Agreement and under the sections
the Interstate Commerce Act hereinabove referred to.
intiff, nevertheless, remains obligated under the Operat-
and Guaranty Agreement and under the instruments of
l. 9] guaranty endorsed upon the bonds issued by the
fendant Terminal Company to make substantial and pe-
dic payments on account of the interest and costs in-
rred in the retirement of such bonds. For the deprivation
plaintiff's rights no adequate remedy at law exists.

Plaintiff's injury may be redressed only by orders and processes of this Court restoring the parties and operating conditions to the conditions that existed before commission of the wrongful acts hereinabove alleged.

12. Plaintiff now has on its tracks and in its yards more than 2,000 cars owned by other persons, including common carriers, in respect of which plaintiff is under a duty to provide car service. For each day that the plaintiff fails to provide the car service required of it in respect of those cars, it is subjected to and will continue to be subjected to per diem charges in excess of $6,400.00. Only by intervention of the injunctive powers of this Court may plaintiff be enabled to perform its duty to provide car service in respect of such cars and avoid the accrual of large and unnecessary charges.

WHEREFORE, plaintiff demands:

1. That the Court enjoin and restrain the defendants Terminal Company, Coast Line and Seaboard from continuing their wrongful and unlawful acts and conduct as may be necessary to restore the parties to the conditions existing prior to the commission of such wrongful acts and conduct, and as may be necessary to maintain those conditions during the pendency of this action.

2. That the Court require the defendants Terminal Company, Coast Line and Seaboard, during the pendency of this proceeding, to continue recognizing and giving effect to [fol. 10] plaintiff's rights under the Operating and Guaranty Agreement and the provisions of the Interstate Commerce Act hereinabove mentioned.

3. That the Court enter a permanent injunction in accordance with the demands made by paragraphs 1 and 2 above.

4. That the Court award plaintiff a money decree against the defendants Terminal Company, Coast Line and Sea-

COPY BOUND CL

board for the damage sustained by plaintiff, including attorneys' fees and costs.

BEDELL, BEDELL & DITTMAR

By /s/ CHESTER BEDELL
1520 Barnett National Bank Building
Jacksonville, Florida
Attorneys for Plaintiff.

/s/ JOHN B. L'ENGLE
John B. L'Engle
Florida East Coast Railway Company
St. Augustine, Florida

Of Counsel.

STATE OF FLORIDA)
COUNTY OF DUVAL)

W. L. THORNTON, being first duly sworn, says that he is Vice-President and Chief Operating Officer of the plaintiff and that the factual allegations contained in the foregoing complaint are true.

/s/ W. L. THORNTON

Sworn to and subscribed before me
this 27th day of January, 1963.

/s/ LILA BROWN WEST

Notary Public, State of Florida at Large.
My commission expires: Sept. 29, 1965.

SE IN CENTER

[fol. 11]

EXHIBIT "A"

OPERATING AND GUARANTY AGREEMENT

JACKSONVILLE TERMINAL COMPANY

WITH

ATLANTIC COAST LINE RAILROAD COMPANY,

Trustees of

FLORIDA EAST COAST RAILWAY COMPANY,
SEABOARD AIR LINE RAILROAD COMPANY,
SOUTHERN RAILWAY COMPANY,
GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY

AND

UNITED STATES TRUST COMPANY OF NEW YORK

AND

GUY W. BOTTS,

As TRUSTEES.

Dated as of December 1, 1947

[fol. 12] AN AGREEMENT, made and entered into this 1st day of December, 1947, by and between

JACKSONVILLE TERMINAL COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Florida, hereinafter for convenience styled the Terminal Company, party of the first part;

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Virginia, hereinafter for convenience styled the Coast Line Company, SCOTT M. LOFTIN and JOHN W. MARTIN, as Trustees of the Properties of Florida East

COPY BOUND CLOS

Coast Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Florida, hereinafter for convenience styled the East Coast Trustees, SEABOARD AIR LINE RAILROAD COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Virginia, hereinafter for convenience styled the Seaboard Company, SOUTHERN RAILWAY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Virginia, hereinafter for convenience styled the Southern Company, and GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Georgia, hereinafter for convenience styled the Georgia Company, parties of the second part; said parties of the second part being hereinafter for convenience styled the Railway Companies, when referred to collectively; and the said Coast Line Company, East Coast Trustees, Seaboard Company and Southern Company, when referred to collectively and when the purpose is to exclude the Georgia Company, being hereinafter for convenience styled the Guarantor Companies; and UNITED STATES TRUST COMPANY OF NEW YORK, a corporation organized and existing under and by virtue of the laws of the State of New York and [fol. 13] FRANK J. WIDEMAN as Trustees under the First Mortgage of the Terminal Company, dated December 1, 1947, hereinafter for convenience styled the Trustees, parties of the third part;

WITNESSETH: That

WHEREAS, the Railway Companies severally own and operate or use lines of railroad entering the City of Jacksonville, in the State of Florida, and are engaged in the operation of passenger and freight trains, and the transportation of passengers and property thereon, to and from the said City of Jacksonville; and

WHEREAS, the Guarantor Companies own or control a majority in interest of the capital stock of the Terminal Company; and

SE IN CENTER

WHEREAS, the Terminal Company owns in the said City of Jacksonville a modern and commodious passenger station and terminal facilities, including necessary tracks and facilities suitable for the handling of passenger trains and for the convenience of passengers of the Railway Companies, and the necessary railway tracks extending from said passenger station to connections with the tracks of the Railway Companies in and about the City of Jacksonville; together with facilities for the interchange of freight cars between the Railway Companies, for the serving of industries located on or adjacent to its property, and for connections between the freight yards of the Railway Companies and its interchange freight yard; and

WHEREAS, the Terminal Company, Coast Line Company, Florida East Coast Railway Company, Seaboard Air Line Railroad Company, (as successor in interest to Seaboard Air Line Railway Company), Southern Company and United States Trust Company of New York, as Trustee, are parties to an agreement dated June 1, 1917, and an agreement supplementary thereto dated October 1, 1921; and the Terminal Company, Coast Line Company, William R. [fol. 14] Kenan, Jr. and Scott M. Loftin, as Receivers of the Properties of Florida East Coast Railway Company, Legh R. Powell, Jr. and Henry W. Anderson, as Receivers of the Properties of Seaboard Air Line Railway Company, Southern Company and United States Trust Company of New York, as Trustee, are parties to an agreement dated April 4, 1939, and Georgia Company, Coast Line Company, Florida East Coast Railway Company, Seaboard Air Line Railroad Company (as successor in interest to Seaboard Air Line Railway Company), Southern Company and Terminal Company are parties to an agreement dated June 1, 1917, all relating, among other things, to the use by the Railway Companies of said passenger and freight terminal facilities of the Terminal Company at Jacksonville, Florida, and all being hereinafter collectively referred to as the Operating Agreements; and

WHEREAS, the East Coast Trustees (Scott M. Loftin and John W. Martin) are the duly appointed, qualified and acting Trustees of the Properties of Florida East Coast Railway Company, and the Seaboard Air Line Railroad Company is the successor in interest of the Seaboard Air Line Railway Company; and

WHEREAS, the East Coast Trustees have not adopted or rejected the Operating Agreements (the time to act on the Operating Agreements having been extended by orders of the court administering the Estate of Florida East Coast Railway Company), the East Coast Trustees, since their appointment, have continued the use of said terminals and facilities and have made the payments currently required to be paid by the said East Coast Company under the terms of said Operating Agreements without adopting the said agreements and the obligations of the East Coast Company thereunder, otherwise than as provided in said agreement of April 4, 1939; and

WHEREAS, the Terminal Company proposes to execute and deliver to the Trustees, with the consent and approval of the Railway Companies and pursuant to due corporate action, and, with due authority of the Interstate Commerce [fol. 15] Commission, a new First Mortgage, bearing date of December 1, 1947, to secure not exceeding Five Million Dollars ($5,000,000) principal amount, of its new First Mortgage Bonds, issuable in lettered series, and payable not later than December 1, 1977, of which Four Million Dollars ($4,000,000) principal amount, denominated Series A, are to be issued immediately and are to be used in taking up, cancelling and retiring One Hundred Thousand Dollars ($100,000) principal amount, of the Terminal Company's First and General Mortgage Bonds, now outstanding, and Three Million Nine Hundred Thousand Dollars ($3,900,000) principal amount, of the Terminal Company's Refunding and Extension Mortgage Bonds, now outstanding (whereupon the Terminal Company will cause the said Mortgages to be satisfied and released of record); and

WHEREAS, in order to enable the Terminal Company to sell and dispose of its said Bonds and to obtain the joint and common use of said passenger and freight terminal facilities, the Railway Companies are willing to agree with each other and with the Terminal Company and the Trustees that they will use, jointly and in common, for their passenger service the said terminals of the Terminal Company, and for their interchange freight business the interchange freight yard of the Terminal Company, (and no other except as herein otherwise provided in Article TWENTIETH hereof), for the conduct of their said passenger business and interchange freight business in the said City of Jacksonville, for and during the life of this agreement, it being understood that the Railway Companies are to have the right, at their option, to the use of other freight tracks and facilities of the Terminal Company in the handling of their freight business other than interchange; provided, that interchange between the Southern Company and the Georgia Company on their present interchange tracks shall be excepted from the obligations of this paragraph.

[fol. 16] NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That the Terminal Company, for and in consideration of the covenants of the Railway Companies hereinafter expressed, hereby covenants and agrees:

THAT it will, and it hereby does, grant unto the Railway Companies, parties of the second part hereto, and to their respective successors and assigns, severally, the equal right to use in common, for the accommodation of their passenger and freight traffic in the City of Jacksonville, with the right in the Southern Company to include in its use the passenger and freight traffic of the Georgia Company, its successors and assigns,

ALL AND SINGULAR, the passenger and freight terminal facilities of the Terminal Company in the City of Jacksonville and State of Florida, including the passenger station building situated on the south side of West Bay Street,

COPY BOUND CLOSE

and the train sheds, tracks and yards of the Terminal Company in connection therewith, and all after-acquired property used in connection therewith or in substitution therefor;

TOGETHER with all the houses, offices, express, baggage and waiting rooms, platforms and appurtenances, and yard, shop and repair and other services, facilities and privileges, of whatsoever nature, to the said station building, tracks and property belonging, or in any wise appertaining, which may be necessary for the movement of trains and the use, comfort and convenience of passengers, and handling of baggage, mail and express, the transportation, movement and switching of loaded and empty freight cars, and the transaction of passenger and freight business at said City of Jacksonville, excepting only such parts thereof as the Terminal Company may lease to third persons for the handling of express, maintenance of telegraph stations, restaurants, news stands, and other facilities necessary for the convenience of the traveling public, or as may be, by special arrangement not objected to by any of the Railway Companies, occupied by any one or more of the Railway Companies, or by third persons for office or other purposes.

fol. 17] TO HAVE AND TO HOLD the said rights for the full term of thirty (30) years, beginning on the first day of December, 1947, and thence next ensuing; upon the Railway Companies, respectively, severally faithfully performing each and every their covenants in this agreement contained; and

YIELDING AND PAYING as rental for, and as costs to maintain and operate, the properties of the Terminal Company, the sums on the dates and in the manner hereinafter described, each of the Railway Companies agreeing severally to pay the proportion thereof hereinafter shown, viz.:

(1) A sum or sums equal to the interest upon the First Mortgage Bonds of the Terminal Company, issued under its First Mortgage dated December 1,

IN CENTER

1947, of which the United States Trust Company of New York and Frank J. Wideman are Trustees, which may be outstanding at any interest date;

(2) A sum or sums equal to interest, at rates to be agreed upon by the Board of Directors of the Terminal Company, payable by the Terminal Company upon the amount of cash advances made by the Railway Companies to the Terminal Company at any time outstanding;

(3) A sum or sums equal to the interest actually paid by the Terminal Company upon money borrowed from banks or others;

(4) A sum or sums equal to the net deficit from operations of the terminal facilities jointly used by the Railway Companies;

and the Guarantor Companies similarly agree severally to pay the proportion hereinafter shown of:

(5) A sum or sums equal to the net loss or deficit from property owned, or which may be hereafter acquired in accordance with this agreement, by the Terminal Company, not used by it for terminal or transportation purposes.

The Guarantor Companies further agree that they will severally advance to the Terminal Company in equal pro- [fol. 18] portions, i.e., one-fourth (¼th) each, on open account bearing interest at the rate of three per cent. (3%) per annum a sum or sums equal to the amount required each year for the annual sinking fund installment upon the First Mortgage Bonds of the Terminal Company theretofore issued. such advances to be made at such time or times as may be specified by the Board of Directors of the Terminal Company by written notice to the Guarantor Companies.

IT IS HEREBY MUTUALLY AGREED BY AND BETWEEN THE TERMINAL COMPANY AND THE RAILWAY COMPANIES:

FIRST: That the Terminal Company will cause its accounts and records to be kept in accordance with the methods prescribed by the rules, regulations and classifications of the Interstate Commerce Commission, and that it will permit such accounts and records to be examined and audited, from time to time, by accredited representatives of the Railway Companies, respectively.

SECOND: The investment of the Terminal Company in properties and facilities, recorded value as of June 30, 1947, is hereby, for the purposes of this agreement, assigned by the Guarantor Companies and the Terminal Company to each of the several classes of property owned by the Terminal Company as follows; said amounts so assigned being hereinafter sometimes referred to as value or values:

(a) Values of definitely separable parcels of land, together with any improvements thereon, not used for or in connection with transportation purposes by the Railway Companies (such values to be assigned under the head "Miscellaneous Physical Property"), $121,769.23.

(b) Values of properties used for transportation or terminal purposes by or for account of the Railway Companies. The values provided for in this paragraph (b) include values of lands, tracks, buildings, [fol. 19] equipment, and all costs incurred in connection with the terminal properties proper, which may be properly classified as and charged to "Road and Equipment Property." The values described in this paragraph (b) being subdivided into:

(1) Value of facilities used in connection with passenger service including rolling stock, $4,287,555.79.

(2) Value of facilities used in connection with freight service including rolling stock, $537,369.88.

In the event that a change in conditions shall occur which shall result in a change in the character or use of any determinable part or portion of the properties hereinbefore assigned to any one of the three classes of property, then the amount standing against such part or portion in the above assigned values, if approved by unanimous action of the Directors of the Terminal Company, shall be transferred to that class or classes in which such changed character or use would properly place said part or portion.

There shall be charged and credited to the agreed values assigned as in this Article SECOND provided to the properties described in paragraphs (a) and (b) above, the costs of all additions and betterments, retirements and changes made in the physical property of the Terminal Company, subsequent to June 30, 1947, apportioned according to the classes and subclasses above shown, to the end that the records of the Terminal Company may at all times reflect the proper costs to it, thus subdivided, of its physical property then in existence.

THIRD: That the Terminal Company will cause to be kept daily, separate and accurate records of the number of all cars, which arrive at and depart from the passenger terminal (or which shall be deemed to have so arrived and departed as provided in Article TWENTIETH hereof) in the trains of the Railway Companies, respectively; and that in like manner it will keep daily, separate and accurate records of the number of cars which arrive at and depart from the interchange freight yard or which use (or which [fol. 20] shall be deemed to have used, as provided in Article TWENTIETH hereof) the freight facilities of the Terminal Company; PROVIDED, however, that the use of said facilities, passenger and freight, by the Georgia Company, its successors and assigns, shall for the purposes of this agreement, including the basis of rental, be treated as if such use were

that of the Southern Company, and PROVIDED FURTHER, that the following freight train cars shall not be counted as having used the facilities of the Terminal Company: (a) those of the Coast Line Company and East Coast Trustees because of their use of a certain ladder track, and its appurtenant facilities, of the Terminal Company under and pursuant to the terms, and for the purposes contemplated by, the deed from the Terminal Company to the Coast Line Company and Florida East Coast Railway Company, dated November 6, 1917, providing for the con-joint use of said ladder track; (b) those of the Seaboard Company because of their use of a certain ladder track, and its appurtenant facilities, of the Terminal Company under and pursuant to the terms, and for the purposes contemplated by, the deed from the Terminal Company to Seaboard Air Line Railway Company, dated October 16, 1916, providing for the con-joint use of said ladder track; (c) those of the Coast Line Company by reason of its use of certain facilities of the Terminal Company in connection with the moving of such cars over tracks of the Coast Line Company constructed on the two (2) thirty (30) foot strips of land heretofore conveyed by the Terminal Company to the Coast Line Company, by its deeds dated October 19, 1916, and December 3, 1917, respectively; (d) those of the Seaboard Company by reason of their use of certain facilities of the Terminal Company in connection with the moving of such cars over a track of the Seaboard Company constructed on the thirty (30) foot strip of land heretofore conveyed by the Terminal Company to Seaboard Air Line Railway Company, by its deed dated October 16, 1916; and (e) those of the Coast Line Company moving to and from industries located at or near Broad Street and now served solely by the Coast Line Company; (f) those of the Seaboard Com-[fol. 21] pany moving to and from industries located east of Broad Street Viaduct now served solely by the Seaboard Company.

A passenger train car or a freight train car which shall use or shall be deemed, pursuant to Article TWENTIETH hereof, to have used the facilities of the Terminal Company which both arrives and departs in a continuous train movement is to be counted as two cars; that is, as one car in and as one car out, except that no freight car using the facilities of the Terminal Company shall receive a count of more than one upon arrival at Jacksonville nor more than a count of one upon departure therefrom.

Empty passenger train cars switched into the terminal for load or switched out of the terminal after being unloaded, and locomotives and tenders moving into or out of the terminal with or without trains, are not to be included in the count above described.

Monthly reports shall be rendered by the Terminal Company to each of the Railway Companies, on or before the fifteenth day of each month following that for which made, showing separately, and, by classes, cars using or deemed to have used the passenger facilities, and those using or deemed to have used the freight facilities, respectively, for account of each of the Railway Companies, together with a summary showing the percentage of the total cars of each of the Railway Companies so using or deemed to have used the passenger facilities to the total of all such cars using the passenger facilities, and in like manner the percentage of the total cars of each of the Railway Companies so using or deemed to have used the freight facilities to the total of all cars using the freight facilities, and the percentages thus determined shall represent the measures of use by each of the Railway Companies of the passenger facilities and of the freight facilities, respectively, of the Terminal Company.

FOURTH: That the Terminal Company will cause to be kept separate and accurate records of accounts of revenues [fol. 22] and income derived from, and expenses, taxes and all other costs (except interest on its bonds and other

COPY BOUND

indebtedness) incurred in the maintenance and operation of each of its several classes of property, viz:

(a) Its facilities devoted to the passenger service;

(b) Its facilities devoted to the freight service;

(c) Its other physical property not used for or in connection with its terminal or transportation facilities;

by charging against each said class, on the one hand, all expenses incurred in the maintenance and operation of each of the several classes of property, including depreciation (accrued as provided in Article Tenth hereof), taxes as they may accrue, and an equitable proportion, respectively, of all general or administrative costs, (including expenses incurred by the Terminal Company, with the approval of the Guarantor Companies, in connection with the refinancing being accomplished through the issuance of its First Mortgage Bonds of Series A, under its First Mortgage dated December 1, 1947, including, but without limitation thereto, premiums payable upon call of indebtedness for payment or redemption, issuance taxes, recordation fees, and printing, legal and accounting expenses), and by crediting, on the other hand, all revenues accrued from rents and all other sources for privileges granted to individuals, firms or corporations, not parties to this agreement, and all revenues received from any of the Railway Companies for space granted for office or other purposes, by special arrangement, as hereinbefore provided in the granting clause hereof.

The difference between the operating costs, taxes, etc., on the one hand, and the revenues accrued, on the other, shall represent the net operating profit or deficit from operations of each of the three classes of property above described. From such profits there shall be deducted, or to such deficits there shall be added, all income charges, other than interest on its bonds and other indebtedness, which

may be incurred by the Terminal Company in the opera-
[fol. 23] tion of its properties and the net profit or deficit thus determined shall represent the amounts to be credited to or paid by the Railway Companies, in the manner hereinafter described, as representing profits from or net costs to maintain and operate the properties of the Terminal Company. In the event that the method of keeping the accounts as outlined above proves to be impracticable, some other method may be adopted at any time and from time to time, with the unanimous consent of the Board of Directors of the Terminal Company.

FIFTH: That the Terminal Company will cause to be rendered to each of the Railway Companies on or before the twentieth day of each month following that for which rendered, in such detail as may be required and agreed upon by the Railway Companies, statements of operating revenues and operating expenses, taxes and other charges, and the net profits or deficits from each of the three classes of property herein described.

SIXTH: That the net cost, exclusive of interest or rental, to each of the Railway Companies to maintain and operate the properties of the Terminal Company used for transportation purposes shall be determined by the Terminal Company monthly and paid in monthly settlements by the Railway Companies, severally and respectively, in the following manner, viz:

(a) The passenger costs to each of the Railway Companies shall be the sum determined by applying the percentage of use of the passenger facilities as defined in Article THIRD, preceding, to the net cost or deficit to maintain and operate such passenger facilities.

(b) The freight costs to each of the Railway Companies shall be the sum determined by applying the percentage of use of the freight facilities as defined in

Article THIRD, preceding, to the net cost or deficit to maintain and operate such freight facilities.

[fol. 24] (c) The Terminal Company shall, not earlier than five (5) days after the rendition of the monthly statements of operations, provided for in Article FIFTH hereof, draw sight draft upon each of the Railway Companies for its proportion of such net costs or deficits from operations for the preceding month;

PROVIDED, however, that if at any time during the life of this agreement the Terminal Company should not have sufficient funds to pay the current operating deficits referred to in Article FOURTH hereof the Railway Companies agree to each honor the Terminal Company's draft any time after the first day of such current month for their respective proportions (computed on user percentages for the next preceding month) of (i) the amount of the estimated deficit of the character referred to in said Article FOURTH for such current month, or (ii) of such specific items of expense of the character referred to in said Article FOURTH as shall be authorized by unanimous action of the respective Chief Accounting Officers of the Railway Companies, and that thereafter, as soon as may be, the account shall be definitely stated and settled between the parties hereto on the basis of the actual net deficit and user percentages for the current month, it being understood and agreed that all of the several statements of user percentages, operating costs, etc., shall be subject to check and verification by the Railway Companies, respectively, and that any and all adjustments found to be proper shall be made by the Terminal Company in its accounts for the month during which such adjustments shall have been found to be proper.

SEVENTH: That the net cost, exclusive of interest and sinking fund requirements, to maintain and operate the miscellaneous physical property of the Terminal Company not used for or in connection with terminal or transportation facilities shall be determined by the Terminal Com-

pany and charged to and paid by the Guarantor Companies, respectively, monthly, on bills or statements to be rendered by the Terminal Company, in equal proportions, i.e., one-fourth (¼th) each.

[fol. 25] EIGHTH: That the interest upon the Mortgage Bonds and other indebtedness of the Terminal Company at any time outstanding, designated as rental, shall be determined by the Terminal Company and paid by the Railway Companies, respectively, in the following manner, viz:

(a) On or before the twentieth day of each May and of each November, during the life of this agreement, the Terminal Company shall determine, and render to each of the Railway Companies statements showing the total interest which will be due upon all outstanding Mortgage Bonds of the Terminal Company on the respective next ensuing due date, that is to say, on the first day of each June and on first day of each December, respectively, which statements shall also show the apportionment of such interest requirements among the Railway Companies, as follows:

(i) The amount due (except one-eighth (⅛th) of the interest on First Mortgage Bonds of Series A which shall be apportioned as stated in the next paragraph and upon advances for sinking fund which shall be apportioned as stated in subdivision (b) below) shall first be allocated to passenger service and to freight service in the proportions that the respective values of each of the two classes, determined as provided in Article SECOND hereof, bears to such aggregate value of said two classes of facilities; the amounts so allocated to freight service and to passenger service shall be apportioned among the Railway Companies in proportion to the use of each service by each Railway Company during the six (6) full calendar months next preceding each respective said twentieth day of May and November, such use to be determined by taking user percentages

of the cars using the passenger and freight falicities, respectively, as calculated from the reports rendered under Article THIRD hereof for the six (6) months upon which such calculation is based.

(ii) The remaining one-eighth (⅛th) of the interest on First Mortgage Bonds of Series A included in said amount of interest due shall be apportioned among the Guarantor Companies in equal proportions, i.e., one-fourth (¼th) each.

[fol. 26] (b) Interest on advances for sinking fund shall be on same basis as interest on bonds.

(c) All interest payable by the Terminal Company, as aforesaid, other than that upon the First Mortgage Bonds and upon sinking fund advances, shall be determined by the Terminal Company ten (10) days before such interest shall become due and the Terminal Company shall then on that day render statements to the Railway Companies showing the total of such interest, which statements shall also show the apportionment of such interest among the Railway Companies in the following manner:

Interest due (except as stated in the next sentence) shall first be allocated between passenger service and freight service in the proportions that the respective values of each of the two classes of facilities determined as provided in Article SECOND hereof, bears to such aggregate value of said two classes of facilities, and the interest so allocated to each respective service shall then be apportioned among the Railway Companies in proportion to the use of each service by each Railway Company during the six (6) full calendar months next preceding the date upon which said statements are prepared. Interest due, properly chargeable to miscellaneous physical property, shall be apportioned among the Guarantor Companies in equal proportions, i.e., one-fourth (¼th) each.

NINTH: That each of the Railway Companies will pay unto the Terminal Company, on or before the 24th day of each month preceding the month in which any interest requirements are due, its proportion of interest requirements determined as hereinbefore in Article EIGHTH set forth and that the Terminal Company will apply such payments to the installments of interest requirements covered by such payments.

TENTH: That the Terminal Company will accrue depreciation upon its equipment and its fixed operating physical property at rates and values which have been or may, from time to time hereafter, be ordered, prescribed or approved by the Interstate Commerce Commission, and that such [fol. 27] depreciation thus assessed shall be considered as an operating cost of the Terminal Company chargeable to its passenger or freight service, as the case may be, and that the moneys paid by the Railway Companies to the Terminal Company for or in connection with such depreciation charges so assessed shall be set aside by the Terminal Company and used only for the purpose of renewing equipment and fixed operating physical property of the Terminal Company, as such renewals may be found to be necessary, and for additions and betterments to its property subject to the approval of the Board of Directors of the Terminal Company or for such other corporate purposes as the Board of Directors may determine with the unanimous consent of the Guarantor Companies.

ELEVENTH: That in the event there should, as a result of operations of either of the three classes of property herein described, be a net profit to the Terminal Company from such operations during any one month or a series of months, such net profit shall be credited on the books of the Terminal Company to each of the Guarantor Companies in equal proportions, and that such credit thus given shall be applied to and deducted from the rental due by the Guarantor Companies respectively for the period in which such profit may accrue.

TWELFTH: That in the event the Guarantor Companies all advance funds to the Terminal Company for construction purposes, or in case the Terminal Company shall, with e consent of all of the Guarantor Companies, borrow oney from banks or others, for such purposes, the interest which may accrue upon such advances or loans shall, ring the period of construction, be charged to the cost of ch construction and contributed during the period of nstruction by the Guarantor Companies, respectively, in ual proportions. After completion of construction, such terest shall be included in and as a part of the interest crued as provided for in Article EIGHTH (c) hereof.

ol. 28] THIRTEENTH: That in addition to all other rents d moneys herein agreed to be paid, each of the Railway mpanies, parties hereto, will also pay unto the Terminal mpany in monthly settlements, during the term hereby eated, all reasonable and proper bills rendered by the rminal Company for cleaning cars, hostling and caring r locomotives, for all necessary running repairs done upon supplies furnished to its cars and locomotives, and any ner direct service or exclusive service rendered by the rminal Company for or on its account, bills therefor to presented monthly by the Terminal Company for the eceding calendar month, and paid within thirty (30) ys thereafter; PROVIDED, however, that nothing herein ntained shall be construed as imposing an obligation upon e Railway Companies, or any of them, to have their cars locomotives, or any of them, cleaned, serviced or reired by the Terminal Company, or to purchase any supies therefor from the Terminal Company, but the Railay Companies, or any of them, may, if they shall so elect, quire the performance of such service by the Terminal mpany, upon payment, as aforesaid, of reasonable and oper charges therefor, and PROVIDED FURTHER that the rminal Company shall not be required to furnish new cilities for such services without unanimous consent of e Board of Directors.

FOURTEENTH: That the Terminal Company will maintain the said passenger station and terminal facilities at all times during the life of this agreement in a manner satisfactory and acceptable to said Railway Companies, looking to the safe and proper conduct of the business of the Railway Companies in and about the said station and terminal facilities and the operation of the trains of the Railway Companies upon the said tracks of the Terminal Company.

FIFTEENTH: That the Terminal Company shall and will at all times during the term of this agreement maintain and renew it corporate existence and organization, so long as permitted by law so to do, and at all times and from time to time during said term shall and will put forth and [fol. 29] exercise each and every corporate power and do each and every corporate act which the Terminal Company might now, or at any time hereafter, put forth or exercise to enable each of the Railway Companies to enjoy and avail itself of and exercise every right, franchise and privilege hereby granted, according to the terms of this agreement, and will not commit or omit, or suffer or allow to be committed or omitted, any act whereby its corporate existence or powers may be annulled, abridged or affected.

SIXTEENTH: To the end that purchasers of all First Mortgage Bonds, Series A, issued by the Terminal Company under said First Mortgage dated December 1, 1947, may have evidence of and may enjoy the security intended to be afforded by this agreement, the Guarantor Companies hereby agree with one another and with the other parties hereto to guarantee jointly and severally to the holders of all said First Mortgage Bonds, Series A, that shall be issued under said First Mortgage of the Terminal Company dated December 1, 1947, the due and punctual payment of the principal and interest of each and every of said First Mortgage Bonds, Series A, and the Sinking Fund payments thereon, and to that end, the Guarantor Companies will execute an instrument of guaranty en-

rsed upon each of said First Mortgage Bonds, Series A, the following form, viz.:

"GUARANTY"

"For Value Received, Atlantic Coast Line Railroad Company, Scott M. Loftin and John W. Martin, as Trustees of the Properties of Florida East Coast Railway Company, but not individually, Seaboard Air Line Railroad Company, and Southern Railway Company, by due authority (obtained as to said Trustees by order entered, respectively, in the Causes in which said Trustees have been appointed) hereby jointly and severally unconditionally guarantee to the holder of the within bond the due and punctual payment of the principal thereof and of the interest thereon; and the payment when due of all moneys required to be paid into the Sinking Fund referred to in the within bond; [fol. 30] and in case of the failure of the Jacksonville Terminal Company punctually to pay the same, do hereby jointly and severally agree punctually to make such payments. Such guaranty of said Trustees is made pursuant to and is subject to the provisions of an agreement dated as of December 1, 1947 between Jacksonville Terminal Company, Atlantic Coast Line Railroad Company, said Trustees, Seaboard Air Line Railroad Company, Southern Railway Company, Georgia Southern and Florida Railway Company and United States Trust Company of New York and Frank J. Wideman as Trustees under the First Mortgage dated December 1, 1947 of Jacksonville Terminal Company.

"In Witness Whereof, the said Companies and Trustees have duly executed this guaranty.

Atlantic Coast Line Railroad Company,

By .....
Vice President

Scott M. Loftin and John W. Martin,
As Trustees of the Properties of Florida East Coast Railway Company,

By .....

Seaboard Air Line Railroad Company,

By .....
Vice President

Southern Railway Company,

By .....
Vice President."

[fol. 31] Neither this guaranty nor the guaranty upon any of the said bonds shall be deemed to be waived or discharged by any extension that any bondholder or the Trustees may give to the Terminal Company, nor by any action of the Trustees or of the Terminal Company, nor in any other way except by the payment in full of said bonds, principal and interest. No provision in this instrument or in said mortgage or bonds is intended in any way to limit, so far as any holder or registered owner of any of said bonds is concerned, the liability of any of the Guarantor Companies upon the guaranty endorsed upon said bonds or in this section set forth, it being the intention of the Guarantor Companies that said guaranty, so far as said bondholders are concerned, shall be absolute and un-

COPY BOUND CLOSE IN

onditional. The provisions of this article are for the bene-
it of said bondholders and of the Trustees.

The obligations of the Railway Companies under this
greement are intended to be, and are agreed to be, solely
orporate obligations, and no recourse under or upon any
bligation, convenant or agreement of the Railway Com-
anies or any of them contained in this agreement, or un-
er or upon any indebtedness assumed or agreed to be
ssumed thereunder, or guaranteed or agreed to be guar-
nteed thereunder or because of the creation thereof, shall
e had against any incorporator or past, present or future
tockholder, officer or director any of the Railway Com-
anies or of any predecessor or successor corporation,
ither directly or through the Railway Companies or any
f them, by the enforcement of any assessment or through
ny receiver, assignee or trustee in bankruptcy, or by any
ther legal or equitable proceedings, whether for amounts
npaid on stock subscriptions or for stock liability or any
ther liability or penalty, or on the ground of any repre-
entation, implication or inference arising from or con-
erning the capitalization of the Railway Companies or any
f them or of any predecessor, assignee, grantee or suc-
essor corporation, or otherwise, and whether by virtue of
ny statute, constitution, contract (express or implied),
ule of law or otherwise, it being expressly agreed and
nderstood that no personal liability whatever shall attach
o or be incurred by the incorporators or past, present or
fol. 32] future stockholders, officers or directors of the
Railway Companies or any of them, or of any predecessor
r successor corporation or any of them; any and all per-
onal liability of every name and nature and any and all
ights and claims against every such incorporator and
ast, present or future stockholder, officer or director be-
ng hereby expressly released and waived as a condition
f and as a part of the consideration for the execution of
his agreement and the agreement to execute and the execu-
ion of the guaranty on the First Mortgage Bonds, Series
, of the Terminal Company hereinbefore provided for.

IN CENTER

SEVENTEENTH: The obligations of the East Coast Trustees under and in respect of said guaranty to be endorsed on the said bonds of the Terminal Company shall be their obligations solely as Trustees of the properties of Florida East Coast Railway Company, and not individually. The Trusteeship of Florida East Coast Railway Company shall not be terminated nor shall the Trusteeship Estate thereunder be surrendered by the East Coast Trustees, or their successor or successors, unless, as a condition of such termination or surrender, all of the obligations then existing or to accrue, of the East Coast Trustees under said guaranty shall be assumed by Florida East Coast Railway Company, or any other corporation, or any trustee or trustees appointed under the Bankruptcy Act, or any receiver or receivers that shall succeed the East Coast Trustees in the possession of substantially all the lines of railroad comprising the East Coast Trusteeship Estate, whether pursuant to any plan of reorganization under Section 77 of the Bankruptcy Act, or upon foreclosure or upon dismissal or termination of the Trusteeship, or otherwise. In any such case the obligation assumed by Florida East Coast Railway Company or any other corporation shall be a general unsecured obligation without a lien on any of its property and the obligation assumed by any such trustee or trustees, receiver or receivers, shall be similar to the obligation of the East Coast Trustees under this agreement [fol. 33] and the agreement of assumption shall include an agreement by such trustee or trustees, receiver or receivers, as to assumption of the guaranty upon termination of the trusteeship similar to the provision herein contained as to assumption of the guaranty upon termination of the trusteeship. In case of any sale or conveyance of substantially all of said lines of railroad of Florida East Coast Railway Company, the purchaser or transferee of the purchaser shall not be at liberty to refuse to accept said guaranty or to disaffirm said guaranty of the East Coast Trustees but if acquiring substantially all of said

lines of railroad for the purpose of transferring them to a corporation formed for the purpose of reorganization, any such purchaser shall not incur any personal liability under or in respect of said guaranty, provided such corporation to which substantially all of said lines of railroad are so transferred in such reorganization shall assume (as a general unsecured obligation without any lien upon any of its property) all obligations of the East Coast Trustees under said guaranty. In case any corporation or any such trustee or trustees, receiver or receivers, shall succeed the East Coast Trustees in the possession and operation of substantially all of said lines of railroad of Florida East Coast Railway Company or any corporation formed for the purpose of reorganization, or any other corporation or any trustee or trustees, receiver or receivers, appointed to take title to substantially all of said lines of railroad (upon the dismissal for any reason of the Bankruptcy proceedings), and shall so assume all the obligations of the East Coast Trustees then existing and to accrue under said guaranty, the East Coast Trustees shall thereupon be relieved from all further liability under or in respect of said guaranty, provided that Florida East Coast Railway Company, or such other corporation, or such trustee or trustees, receiver or receivers, as the case may be, acquiring said lines of railroad, shall execute an instrument or instruments satisfactory to the Trustees, whereby Florida East Coast Railway Company, or such other corporation, or such trustee or trustees, receiver or receivers, shall so [fol. 34] assume the obligations then existing, or to accrue, of the East Coast Trustees under said guaranty. Upon such acquisition and assumption, Florida East Coast Railway Company, or such other corporation or such trustee or trustees, receiver or receivers, shall be substituted for the East Coast Trustees under said guaranty to the same effect as if named in said guaranty in lieu of the East Coast Trustees.

AND THE RAILWAY COMPANIES, EACH FOR ITSELF AND NEITHER FOR THE OTHERS, HEREBY COVENANT AND AGREE:

EIGHTEENTH: That they will pay the rentals and charges hereinbefore specified unto the Terminal Company in the amounts and at the times hereinbefore stated.

NINETEENTH: That in the event the Terminal Company shall, having first obtained the unanimous consent of the Guarantor Companies as hereinafter required, at any time hereafter make any extraordinary expenditures, of the character properly chargeable to capital account, for additions to or improvements upon its station building, or terminal facilities, for the accommodation of the passenger or freight traffic then handled or proposed to be handled therein, for which bonds or other securities may be issued by the Terminal Company, the Railway Companies, parties hereto, will pay unto the Terminal Company in addition to all other payments hereby reserved and agreed to be paid, such aggregate sum as will be equivalent to the interest charges upon such bonds or other securities which the Terminal Company issues against all such extraordinary expenditures actually made by it for the purpose aforesaid, such additional sum to be contributed and paid by the Railway Companies, respectively, in the same proportions and manner as is hereinbefore provided in Article EIGHTH (e), it being understood that in the event such extraordinary expenditures as are herein referred to are authorized, the [fol. 35] Terminal Company will, with the approval of its Board of Directors, make appropriate apportionment of such expenditures to the classes of its facilities described in Article SECOND hereof.

TWENTIETH: That they, the Railway Companies, will use the said station building and passenger facilities and interchange freight yard of the Terminal Company (and no other save as in this Article hereinafter provided), for the handling of all of their passenger train business, including trains containing mail, baggage and express as well

as passengers and for the handling of all the freight business interchanged between the parties hereto, or any of them, in the City of Jacksonville for and during the full term hereby created; provided that interchange between the Southern Company and the Georgia Company on their present interchange tracks shall be excepted from the obligations of this paragraph; and this undertaking shall, to the extent not inconsistent with any of the provisions of Article SEVENTEENTH hereof, be binding upon the Railway Companies, and their respective successors and assigns (the words "successors and assigns" as used in this paragraph shall, in the case of the East Coast Trustees, be held to include any successor Trustee or Trustees of the properties of Florida East Coast Railway Company hereafter appointed, and upon termination of the Trusteeship, the Florida East Coast Railway Company, if it come into possession of said property, or any person or corporation who may acquire said properties whether by purchase or otherwise) with like effect as a covenant real running with the land; the intention hereof being by this agreement to create an obligation upon the owners or lessees of the lines of railroad entering Jacksonville now owned or operated by the respective Railway Companies, and upon their respective successors and assigns in respect to said lines, whosoever they may be and howsoever they may acquire their title, and a like obligation upon the Southern Company, which now uses the tracks of the Coast Line Company in entering the said City of Jacksonville, and its successors or assigns in respect to such use of said passenger facili-[fol. 36] ties and interchange freight yard, to do and handle all their passenger, mail and express business and all the freight business interchanged between the parties hereto, or any of them, in the City of Jacksonville in the said passenger terminal and interchange freight yard of the Terminal Company and no other throughout the term of the life of this agreement; PROVIDED, however, that any of the Railway Companies may, if it so elect, use auxiliary passenger stations within the city limits of Jacksonville;

cars in trains operated to, through or from such auxiliary stations which may not arrive or depart from the main terminal station to be counted just as if such cars and trains did go into the main terminal station covered by this agreement; and, PROVIDED FURTHER that any of the Railway Companies, parties hereto, may effect interchange between themselves in their own yards, or elsewhere, as they may elect, with or without using all or any part of the freight facilities of the Terminal Company; all such cars other than those interchanged between the Southern Company and the Georgia Company on their present interchange tracks to be deemed to have used said freight facilities and to be counted just as if said such cars had used said freight facilities as provided by this Article TWENTIETH.

AND IT IS MUTUALLY COVENANTED AND AGREED:

TWENTY-FIRST: That the use of said station, tracks and facilities of the Terminal Company by the Railway Companies shall be subject to the jurisdiction of the Terminal Company and its duly authorized officers and employees; and the Railway Companies agree that while in or about the said terminal facilities of the Terminal Company, their employees and trains shall faithfully conform to all reasonable and proper instructions and directions of all proper officers of, and will use the proper standard time prescribed by, the Terminal Company; PROVIDED, however, that the President or General Manager, or any other officer subject to election by the Board of Directors of the Terminal Company, shall be appointed and serve only by unanimous con- [fol. 37] sent of the Guarantor Companies and shall (any provision of the by-laws of the Terminal Company to the contrary notwithstanding) be dismissed upon the written request of any one of the Railway Companies, and that the dismissal of any subordinate official of the Terminal Company shall be made by the President or the General Manager upon the written request of any one of the Railway Companies. The Terminal Company shall require that the

services of all its officers and employees shall be performed without partiality or discrimination as between the Railway Companies.

TWENTY-SECOND: That in the event that any of the Railway Companies, its successors or assigns, shall be in default for sixty (60) days in the payment of any installment of rent or other payments as herein provided to the Terminal Company, or in the performance of any other of its covenants in this agreement contained, then the Terminal Company, acting through its President or Vice President, may, and upon demand of two or more of the Railway Companies shall, after ten (10) days' notice, in writing, exclude such Railway Company so in default and all persons or corporations then enjoying rights in and to the use of said terminal facilities in the right of any of the Railway Companies so in default, from the further use of its said terminal facilities, and all rights of any such defaulting Railway Company and of any person or corporation holding under it, as aforesaid, under this agreement or otherwise in respect to the use of said terminal facilities, shall absolutely cease and determine upon the expiration of such ten (10) days' notice, but this agreement shall nevertheless continue to be binding as between the remaining parties hereto; PROVIDED, however, that no such ouster for any such default as is herein contemplated shall in any manner release such defaulting Railway Company from any obligation to the Terminal Company or other party hereto in its behalf theretofore accrued; and PROVIDED FURTHER, that such defaulting Railway Company shall, notwithstanding such ouster, continue to be liable to the Terminal Company for its proportion of that part of the total rental hereinbefore [fol. 38] mentioned as is payable upon a basis of equal proportions and shall pay same to the Terminal Company at the times hereinbefore stated, and in addition, as liquidated damages for such default shall, and it is hereby agreed that it will, at the times hereinbefore stated during the term of this agreement, pay to the Terminal Company such pro-

portion of that part of the total rental hereinbefore mentioned as is based on user as may be determined by using in lieu of the actual user factors as hereinbefore set forth user factors based on the average use by it and the other Railway Companies of said terminal facilities during the last previous six (6) months (or shorter period if default occur in less than six (6) months) for which the accounts of the Terminal Company shall have been stated, as hereinbefore provided, prior to said default; and PROVIDED FURTHER, that the Terminal Company shall apply said sums, so to be paid to it by any such defaulting Railway Company, in the manner and at the times hereinbefore stated, to the payment of interest and the defrayal of the operating and maintenance expenses of said terminals in the same manner as if said default had not occurred.

Should there be an uncollectible deficit by reason of the determined noncollectibility, in whole or in part, of sums payable hereunder by one or more of the Railway Companies to the Terminal Company, due to insolvency of any such defaulting Railway Company or otherwise, such deficit shall be added to the expenses of the Terminal Company and apportioned and paid by the other Railway Companies accordingly upon the basis and in the manner hereinbefore set forth.

TWENTY-THIRD: That any railway company other than the Railway Companies parties hereto, may be admitted to the common use of the demised premises of the Terminal Company upon such terms and conditions as may be fixed and determined by the Guarantor Companies parties to this agreement.

TWENTY-FOURTH: That the Terminal Company shall not, without the unanimous consent of the Guarantor Com- [fol. 39] panies not in default, their successors or assigns, create or issue any capital stock or bonds secured by mortgage upon its property, in addition to the stock and bonds now authorized, nor shall it without said consent create

any floating debt or unsecured obligation for any purpose other than the ordinary expenses incident to the operation and maintenance of its terminals; nor shall it, without such unanimous consent, make any extraordinary expenditures of the character usually chargeable to capital account for additions or improvements to said passenger station or terminal facilities, or any part thereof.

TWENTY-FIFTH: In case of loss of or damage to property or injury to persons occurring on the premises of the Terminal Company, the liability therefor and incidence of loss, cost and expense occasioned thereby shall, as between the parties hereto, be upon the basis hereinafter provided, it being agreed that loss, cost and expense herein provided to be borne by the Terminal Company shall be considered as operating expenses of the terminals and apportioned among the Railway Companies accordingly.

(a) Whenever such loss, damage or injury shall be caused solely by the negligence or misconduct of any one of the parties hereto, the loss, cost and expense arising therefrom, shall be borne by that party. Whenever it shall be caused by the joint negligence or misconduct of any two or more of the parties hereto, the loss, cost and expense arising therefrom shall be borne equally by the parties hereto jointly in fault except that each party so in fault shall wholly bear the loss, cost and expense arising from loss or damage (1) to its own property, (2) to property (if not covered by (1)), in its possession or on its cars, or on cars in its possession, and (3) from injuries to its own employees, and to its passengers while on, boarding or alighting from its trains. If loss, damage or injury occur, the cause of which is unknown or which is not attributable to negligence or misconduct on the part of any of the parties hereto then each of the Railway Companies shall bear the loss, cost and expense due to loss or damage (1) to its property, (2) to property (if not covered by (1)) [fol. 40] in its possession or on its cars or on cars in

its possession, and (3) from injury to its own employees, and to its passengers while on, boarding or alighting from its train, and loss, cost and expense due to loss or damage to other property, or due to injury to other persons shall be included in the expenses of the terminals; PROVIDED, that trains or cars while being shifted by the Terminal Company shall be deemed to be in its possession and custody. Any other railroad company hereafter admitted to the use of the terminals shall assume the same liabilities and responsibilities provided for in this section in connection with the Railway Companies.

(b) In case of damage by fire to rolling stock in possession of a party hereto, the provisions of the preceding paragraph (a) of this Article shall be superseded by the following provisions, to wit: In such case the party in possession shall exclusively assume and bear and indemnify each of the other parties hereto against loss or liability arising therefrom, irrespective of any question of ownership or of negligence or fault; except that loss due to such damage to rolling stock of one of the Railway Companies in possession of the Terminal Company shall be exclusively borne by such Railway Company.

(c) In case of loss or damage to baggage by fire while under railroad transportation check the above provisions shall be superseded by the following provisions, to-wit:

In such case the sole liability as between the parties hereto shall be upon that one of the Railway Companies in whose possession, as hereinafter defined, said baggage was when damaged and such Railway Company, in possession as aforesaid, hereby releases and agrees to hold harmless each other party hereto, whether or not such loss or damage was caused or contributed to by the negligence of such other party, from

loss thereby caused or accruing. The possession of such baggage shall be determined as follows:

(1) Such baggage if checked through Jacksonville shall be considered as in the possession of the Railway Company bringing it thereto until receipted for by a sole employee of the Railway Company which is to move it thence;

[fol. 41] (2) Such baggage if checked by one of the Railway Companies at Jacksonville for transportation thence shall be considered in the possession of such Railway Company;

(3) Such baggage if moved into the terminals checked to Jacksonville shall be considered as in the possession of the Railway Company transporting it thereto.

(d) The possession of baggage while on the premises of the Terminal Company under railroad transportation check shall, save in the above mentioned case of loss or damage by fire, be deemed for the purpose of this agreement, to be as follows:

(1) Baggage checked through Jacksonville shall be considered in the possession of the Railway Company bringing it thereto until receipted for by the Terminal Company and thereafter in possession of the Terminal Company until receipted for to it by the outgoing Railway Company;

(2) Baggage originating at Jacksonville shall be considered in the possession of the Terminal Company until receipted for to it by the outgoing Railway Company;

(3) Baggage moving into Jacksonville shall be considered in possession of the incoming Railway Company until receipted for by the Terminal Company.

(e) All claims of persons or corporations other than the parties to this agreement arising out of loss, damage or injury occurring on the premises of the Terminal Company shall, if a question of negligence or fault on the part of the Terminal Company, or of its employees, in the operation or maintenance of said terminals, be to any extent involved, be cared for, dealt with, defended or otherwise disposed of by and in the discretion of the Terminal Company and if suit shall be brought upon any such claim to which the Terminal Company is made a party defendant, it shall assume entire conduct of the defense of such suit; PROVIDED, that this paragraph shall not apply to any such claim or suit if it involves loss of or damage to property in the possession, or on the cars or on cars in the possession, or to injury to employees, or to [fol. 42] passengers while on, boarding or alighting from the train, of any of the Railway Companies; PROVIDED FURTHER, that any one or more of the Railway Companies shall by assuming entire responsibility for any such loss, damage or injury in a writing addressed to the Terminal Company, be entitled to handle, dispose of or defend any such claim or suit without interference by the Terminal Company; PROVIDED, that this paragraph (e) shall not be construed as affecting the liability for or incidence of loss, cost or expense, as between the parties hereto, but shall be deemed to relate only to the method of handling of such claims and suits.

TWENTY-SIXTH: That if, at any time, a difference of opinion or dispute shall arise between any two or more of the parties hereto in respect to any of the provisions of this agreement, or as to their respective rights, liabilities and duties hereunder, the question so in dispute, if it cannot be settled by the parties themselves, shall be referred to a Board of Arbitration which shall consist of three competent and disinterested persons skilled in such matters, who shall be selected as follows, that is to say, the party

or parties desiring such arbitration shall select one arbitrator and the other party or parties to the disagreement or dispute shall select one arbitrator, and the two arbitrators thus chosen shall select an umpire to preside over such arbitration. The party or parties desiring such arbitration shall give written notice of the same to the other party or parties to the dispute, stating therein definitely the question or questions in dispute, and naming the person selected as arbitrator by the party or parties giving such notice; and thereupon, it shall become and be the duty of the other party or parties to the dispute, within fifteen (15) days after the receipt of such written notice, to name the arbitrator selected by such other party or parties as above provided; and in the event that such other party or parties to the dispute shall fail to do so, then the party or parties giving such notice may select an arbitrator for [fol. 43] such other party or parties to the dispute, and the arbitrators thus chosen shall select an umpire. The Board of Arbitrators, thus constituted, shall give to each of the parties between whom such difference of opinion or dispute shall have arisen notice of the time and place of hearing, which hearing shall not be less than twenty (20) nor more than thirty (30) days after service of such notice; and at the time and place appointed, the said arbitrators shall proceed to the final hearing, unless for good cause shown, of which the arbitrators or a majority of them shall be the judge, such hearing shall be postponed until some later date. The determination of the Board of Arbitrators, so constituted, or a majority of them, shall be made in writing, and a report thereof delivered to each of the parties between whom such difference of opinion or dispute shall exist within sixty (60) days from the date of appointment of the umpire to be chosen by the said arbitrators, unless the parties in dispute shall agree to enlarge the time within which such report may be so rendered, and such determination, when so made, shall be final and conclusive upon the parties in dispute upon the question or questions submitted to such Board. Said arbitration shall

be made a rule of court under the provisions of the Statute Law of Florida. All expenses attending each and every such arbitration shall be borne equally by the parties to the dispute so arbitrated.

It is understood and agreed that any such difference of opinion or dispute may, if the parties to the dispute elect so to do, be referred to a single arbitrator instead of to a Board of Arbitrators constituted as hereinbefore provided.

TWENTY-SEVENTH: In case the Terminal Company shall make default in the payment of any installment, or any part of an installment of interest or sinking fund on any of its bonds issued under and secured by its said First Mortgage, dated December 1, 1947, and any such default shall continue [fol. 44] for three (3) months, or in case the Terminal Company shall make default in the payment of the principal of any of its said bonds according to the tenor and effect thereof, then the Trustees shall become and be subrogated to all the rights of the Terminal Company under this agreement, and as trustees of an express trust, may demand, sue for if necessary, and collect from the Railway Companies and each of them, and their respective successors and assigns and the Railway Companies hereby severally agree that they will pay to the Trustees, any and all installments of rent and any and all other sums, which, according to the tenor of this agreement, shall then be due but not paid, or shall thenceforth accrue to the Terminal Company by or from the Railway Companies, and each of them, but all money so collected by the Trustees from the Railway Companies, or any of them, shall by the Trustees be applied to and for the purposes contemplated by this agreement.

TWENTY-EIGHTH: That this agreement is intended to and shall supersede and cancel the said existing Operating Agreements, except as to any unfulfilled or undischarged obligations or liabilities accrued, accruing or which may hereafter accrue thereunder prior to the redemption of all bonds now outstanding under the aforesaid existing Mortgages; it being understood that the said existing Operating Agreements shall continue in force and effect as to such

unfulfilled or undischarged obligations or liabilities until the same have been settled and disposed of.

TWENTY-NINTH: The Trustees are joined as parties to this agreement for the purpose of securing the benefits thereof to the holders of the First Mortgage Bonds of the Terminal Company and for the further security of said bonds.

THIRTIETH: The covenants, conditions and provisions herein set forth shall be binding upon and inure to the [fol. 45] benefit of the parties hereto and of their respective successors and assigns (which terms shall, in the case of the East Coast Trustees, include the meaning set forth in Article TWENTIETH hereof).

IN WITNESS WHEREOF, Scott M. Loftin and John W. Martin, as Trustees of the Properties of Florida East Coast Railway Company, have executed these presents pursuant to and in accordance with the provisions of an order issued by the court appointing them as such Trustees, and the other parties hereto have caused these presents to be executed and their respective corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized, in ten counterparts, each of which shall be deemed an original, as of the day and year first above written.

JACKSONVILLE TERMINAL COMPANY,

(SEAL) By J. L. WILKES
President.

Attest:

J. N. MOORE
Secretary.

ATLANTIC COAST LINE RAILROAD COMPANY,

(SEAL) By F. D. LEMMON
Vice-President.

Attest:

F. J. PRIMOSCH
Assistant Secretary.

[fol. 46]

SCOTT M. LOFTIN,

JOHN W. MARTIN,
As Trustees of the Properties of Florida East Coast Railway Company,

SCOTT M. LOFTIN (L. S.)
JOHN W. MARTIN (L. S.)

SEABOARD AIR LINE RAILROAD COMPANY,

(SEAL) By R. P. JONES
Vice-President.

Attest:

W. F. CUMMINGS
Secretary.

SOUTHERN RAILWAY COMPANY,

(SEAL) By JOHN B. HYDE
Vice-President.

Attest:

R. L. EDDINGTON
Assistant Secretary.

[fol. 47]

GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY,

(SEAL) By JOHN B. HYDE
Vice-President.

Attest:

R. L. EDDINGTON
Assistant Secretary.

UNITED STATES TRUST COMPANY OF NEW YORK,

(SEAL) By H. L. SMITHERS
Assistant Vice-President.

Attest:

F. J. KEELER
Assistant Secretary.

FRANK J. WIDEMAN (L. S.
(Frank J. Wideman)

[fol. 48]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA,

JACKSONVILLE DIVISION

No. 63-16-Civ.-J.

[Stamp—Filed—Jan 30 1963—Jacksonville, Fla.—Julian A. Blake Clerk]

FLORIDA EAST COAST RAILWAY COMPANY, a corporation,

Plaintiff,

vs.

JACKSONVILLE TERMINAL COMPANY, a corporation, ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, SEABOARD AIR LINE RAILROAD COMPANY, a corporation, SOUTHERN RAILWAY COMPANY, a corporation, and GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY, a corporation,

Defendants.

ORDER FOR PRELIMINARY INJUNCTION

Upon consideration of the application by Plaintiff, Florida East Coast Railway Company, a corporation, for a preliminary injunction, upon Plaintiff's verified Complaint for Injunctive and Other Relief, and upon the evidence introduced and argument submitted by all parties, the Court makes the following findings of fact and conclusions of law after hearing with due notice on January 28 and 29, 1963.

Findings of Fact

1. Plaintiff and Defendants Jacksonville Terminal Company, a corporation (hereinafter called Terminal Company), Atlantic Coast Line Railroad Company, a corpora-

tion (hereinafter called Coast Line), Seaboard Air Line Railroad Company, a corporation (hereinafter called Seaboard), Southern Railway Company, a corporation (hereinafter called Southern), and Georgia Southern and Florida Railway Company, a corporation, are common carriers engaged in the transportation of passengers or property by [fol. 49] railroad and each is a connecting line with the others, within the meaning and application of the Interstate Commerce Act, Title 49, United States Code, Section 1, et seq.

2. The parties hereto other than the defendant Terminal Company are the joint owners of Defendant Terminal Company and, prior to January 23, 1963, had and enjoyed the equal right to use in common, for the accommodation of their passenger and freight traffic in Jacksonville, Florida, the tracks, yards, and switching and interchange facilities owned by Defendant Terminal Company and the services provided by Defendant Terminal Company, including car service as defined by Title 49, United States Code, Sections 1(10) and 1(11), as part of the normal and necessary course of their business and operation. These rights existed, and still do exist, by virtue of the Operating and Guaranty Agreement executed on December 1, 1947, by all parties or by their predecessors in interest, pursuant to authority granted by the Interstate Commerce Commission of the United States and by United States District Court for the Southern District of Florida, and by virtue of the provisions of the Interstate Commerce Act, Title 49, United States Code, Section 1, et seq.

3. On the occasions hereinafter mentioned, Plaintiff presented, or desired to present, as part of the normal and necessary course of its business and operation, a substantial number of empty railway cars to Defendants Terminal Company, Coast Line, Seaboard and Southern for car service, including interchange, by means of the tracks, yards, switching and interchange facilities and services of Defendant Terminal Company, and the events hereinafter mentioned took place:

(a) On January 23, 1963, Defendant Terminal Company refused to permit Plaintiff to deliver cars to the tracks, yards, and interchange and switching facilities of Defen-[fol. 50] dant Terminal Company and thereafter notified Plaintiff that Defendant Terminal Company will continue to prevent Plaintiff from delivering cars to the tracks, yards, and interchange and switching facilities of the Terminal Company;

(b) On January 24, 1963, Defendants Coast Line and Seaboard notified Defendant Terminal Company that it was their position that Defendant Terminal Company should not accept or permit delivery of cars by Plaintiff to the facilities of Defendant Terminal Company. Defendants Coast Line and Seaboard thereafter persisted and still do persist in that position;

(c) Thereafter, Defendants Coast Line and Seaboard gave notice that, even if Defendant Terminal Company should permit Plaintiff to deliver cars to the facilities of Defendant Terminal Company for interchange with Defendants Coast Line and Seaboard, they would refuse car service to Plaintiff and would refuse to accept such cars at their interchange facilities;

(d) On January 25, 1963, Defendant Terminal Company refused to permit Plaintiff to deliver cars to the tracks, yards, and interchange and switching facilities of Defendant Terminal Company for interchange with Defendant Southern, although Defendant Southern was ready, willing and able to accept and desired to accept delivery of such cars and otherwise to provide Plaintiff with car service.

4. Defendant Terminal Company refused and continues to refuse to permit Plaintiff to deliver cars to the facilities of Defendant Terminal Company for interchange and car service, and Defendants Coast Line and Seaboard refused and continue to refuse to accept such cars from Plaintiff by means of the facilities of Defendant Terminal Company. The management of Defendants Terminal Company,

Coast Line and Seaboard have refused because they apprehend that (1) the employees of Defendant Terminal Company will refuse to perform the duties of their employment incident to rendition by Defendant Terminal [fol. 51] Company of car service, including interchange, in respect of cars presented for that purpose by Plaintiff; and that (2) the striking employees of Plaintiff will picket the premises of Defendant Terminal Company for the purpose of protesting the rendition of car service, including interchange, by employees of Defendants Terminal Company, Coast Line and Seaboard, in respect of cars presented by Plaintiff for that purpose, with the result that the contract employees of Defendants Terminal Company, Coast Line and Seaboard will refuse to enter upon the premises of Defendant Terminal Company and thereby will cause disruption and suspension of all operations of those Defendants upon the Terminal Company premises and facilities.

5. The evidence does not support a finding that Defendants Terminal Company, Coast Line and Seaboard conducted themselves and continue to conduct themselves as aforesaid because of the alleged incompetency of Plaintiff's employees to operate trains upon the facilities of Defendant Terminal Company under applicable standards uniformly enforced by Defendant Terminal Company; nor does the evidence support a finding that these Defendants conducted themselves and continue to conduct themselves as aforesaid because they believe that the embargo placed upon Plaintiff in respect of freight traffic is applicable to prohibit car service in respect of empty cars presented and desired to be presented by Plaintiff as aforesaid for car service, including interchange. It clearly appears that the conduct of these Defendants, as hereinabove described, would have been the same even if they had considered that Plaintiff's employees were competent.

6. As the result of the acts and conduct hereinabove described, Plaintiff has been prevented from using the

tracks, yards, and switching and interchange facilities owned by Defendant Terminal Company as well as the services provided by Defendant Terminal Company, in- [fol. 52] cluding car service. Plaintiff has been prevented from interchanging cars with the defendant railroads and from carrying on a part of its normal and necessary course of business and operation by means of the facilities of Defendant Terminal Company and the services of Defendants Terminal Company, Coast Line, Seaboard and Southern, while the Defendants have continued in all other respects to use the facilities of Defendant Terminal Company and the services of each other and otherwise to carry on their normal course of business and operations.

7. It is alleged in the complaint and is undisputed by all counsel as follows:

On Thursday, January 24, 1963, counsel for Defendants Coast Line and Seaboard notified Plaintiff that on Friday, January 25, 1963, Defendants Coast Line and Seaboard would apply to this Court for an order temporarily enjoining and restraining Plaintiff from insisting upon its right to use the facilities of Defendant Terminal Company and enjoining and restraining Defendant Terminal Company from permitting Plaintiff to use its facilities in providing car service and for other purposes. Thereafter, Defendants Coast Line and Seaboard served on counsel for Plaintiff a copy of a proposed complaint for injunction, accompanied by an affidavit by Philip J. Lee, Vice-President of Defendant Coast Line; however, before 11:00 A. M. on January 25, 1963, the time set for the hearing before this Court, counsel for Defendants Coast Line and Seaboard notified counsel for Plaintiff that the complaint would not be filed and that the hearing would not be held. Thus, instead of presenting to this Court or to any other tribunal their contentions that there is a legal basis for refusing to permit Plaintiff to use the facilities of Defendant Terminal Company and the services of Defendants Terminal Company, Coast Line and Seaboard,

these defendants committed and engaged in the acts and [fol. 53] conduct hereinabove set forth. Thereby such Defendants terminated a part of Plaintiff's normal and necessary course of business and operation with them and with Defendant Southern, and they deprived Plaintiff of all opportunity to have the legality and propriety of such conduct determined by the Court before being subjected to the consequences of such conduct.

8. Plaintiff now has on its tracks and in its yards a substantial number of empty cars owned by other persons, including common carriers, which cars Plaintiff is desirous of presenting, but has been prevented from presenting, for car service, including interchange, by use of the facilities of Defendant Terminal Company and the services of Defendants Terminal Company, Coast Line, Seaboard and Southern. With respect to those cars, Plaintiff is subjected to large and unnecessary per diem charges. Moreover, although Plaintiff has been prevented from using the facilities and services of Defendant Terminal Company, of which Plaintiff is one of the joint owners, Plaintiff remains obligated, under the Operating and Guaranty Agreement and under the instruments of guaranty endorsed upon the bonds issued by Defendant Terminal Company, to make substantial and periodic payments on account of the interest and costs incurred in the retirement of such bonds.

9. Plaintiff has been subjected to irreparable injury for which no adequate remedy at law exists.

10. A preliminary injunction is necessary to restore the parties to the positions and conditions existing prior to the commission of the acts and conduct hereinabove described and to maintain those conditions during the pendency of this action and until final determination of the controversy herein.

[fol. 54] CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and of the subject matter of this cause by virtue of Title 28, United States Code, Section 1337, and the Interstate Commerce Act, Title 49, United States Code, Sections 1, et seq.

2. By reason of the Operating and Guaranty Agreement and by reason of Title 49, United States Code, Sections 1 and 3, it was and remains the duty of the Defendants

(a) to furnish adequate car service to Plaintiff;

(b) to establish, observe and enforce as to Plaintiff just and reasonable rules, regulations and practices with respect to car service;

(c) not to observe and enforce as against Plaintiff any unjust or unreasonable rule, regulation and practice with respect to car service;

(d) to afford to Plaintiff all reasonable, proper and equal facilities for the interchange of traffic between the respective lines of the parties hereto and for the receiving, forwarding and delivering of property to or from connecting lines; and

(e) not to give or cause any undue or unreasonable preference or advantage to any party or parties hereto or to any other person in any respect whatsoever; and

(f) to accord to Plaintiff the equal right to use in common with the Defendants, without partiality or discrimination, the tracks, yards, and switching and interchange facilities of Defendant Terminal Company and the services of Defendants Terminal Company, Coast Line and Seaboard, including car service.

3. The acts and conduct of Defendants Terminal Company, Coast Line and Seaboard hereinabove described constituted direct and substantial violations of their duties [fol. 55] and of Plaintiff's rights under the Operating and

Guaranty Agreement and Title 49, United States Code, Sections 1 and 3.

4. Plaintiff has no adequate remedy at law.

5. The acts and conduct of Defendants Terminal Company, Coast Line and Seaboard have resulted in direct, immediate and irreparable injury to Plaintiff, and Plaintiff is therefore entitled to the equitable relief prayed for.

6. The equitable relief granted to Plaintiff is necessary in order to avoid a multiplicity of suits.

7. A preliminary injunction is necessary to prevent irreparable injury to Plaintiff and to restore the parties to the conditions existing prior to the commission of such wrongful actions and conduct.

8. The work stoppage and picketing threatened by representatives of the employees of Defendant Terminal Company and of Plaintiff's striking employees do not constitute justifiable cause for the deprivation of Plaintiff's rights. The Court recognizes the magnitude of the consequences to Defendants and to the public that may result if the threatened work stoppage and picketing were to occur. If Defendants and the public suffer the consequences apprehended by Defendants Terminal Company, Coast Line and Seaboard, then such consequences will be the result of such work stoppage and picketing and not the result of the lawful exercise by Plaintiff of the rights hereby enforced. The Court is unwilling to accept such threatened action as just cause for denying the relief to which Plaintiff is otherwise entitled. The Court nevertheless considers it necessary to afford the interested Defendants an opportunity, before the injunctive relief hereinafter granted becomes effective, [fol. 56] to take such action as those Defendants consider appropriate and necessary in order to protect their interests and the public interest against the consequences of the threatened action. The effectiveness of the injunctive relief will therefore be stayed until 1:00 o'clock P.M., Thursday, January 31, 1963. It is, therefore,

ORDERED and DECREED:

1. That Defendants Jacksonville Terminal Company, a corporation, Atlantic Coast Line Railroad Company, a corporation, and Seaboard Air Line Railroad Company, a corporation, and their officers, agents, servants and employees be enjoined and restrained, during the pendency of this proceeding and until final determination of the controversy herein (a) from refusing to recognize and give effect to the equal right of Florida East Coast Railway Company, a corporation, Plaintiff, to use in common the tracks, yards, and switching and interchange facilities owned by Defendant Terminal Company and to use without discrimination the services, including car service, of Defendants Terminal Company, Coast Line and Seaboard; (b) from refusing to accord to Plaintiff the services of all officers and employees of Defendant Terminal Company without partiality or discrimination as between Plaintiff and any other; (c) from refusing adequate car service to Plaintiff; (d) from enforcing as against Plaintiff any unjust or unreasonable practice in respect of car service; (e) from refusing to afford to Plaintiff all reasonable, proper and equal facilities for the interchange of cars between Plaintiff's line and the respective lines of the Defendants; and (f) from giving or causing any undue or unreasonable preference or advantage to any Defendant: Provided, however, that in presenting cars for car service, including interchange, Plaintiff shall man such cars, or cuts or trains of cars, with sufficient personnel who, under applicable standards uniformly enforced by Defendant Terminal Company, are competent to operate the same as may be necessary upon the facilities of Defendant Terminal Company.

[fol. 57] 2. That this writ of injunction shall be effective as of 1:00 o'clock P.M., Thursday, January 31, 1963, upon Plaintiff's furnishing a bond in the amount of $10,000.00, pursuant to Rule 65c, Rules of Civil Procedure, in a form to be approved by the Clerk.

3. That jurisdiction of this cause is retained by the Court for the purpose of making final disposition of the controversy herein.

DONE and ORDERED at Jacksonville, Florida, this January 30, 1963.

WM. A. McRAE, JR.
JUDGE.

[fol. 67]
[Stamps—U. S. Court of Appeals—Filed—Feb 6 1963—Edward W. Wadsworth, Clerk; Filed—Feb 11 1963—Jacksonville, Fla., Julian A. Blake, Clerk]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

20312

JACKSONVILLE TERMINAL COMPANY, a corporation, ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, and SEABOARD AIR LINE RAILROAD COMPANY, a corporation,

Appellants,

vs.

FLORIDA EAST COAST RAILWAY COMPANY, a corporation, SOUTHERN RAILWAY COMPANY, a corporation, and GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY, a corporation,

Appellees.

AGREEMENT AND STIPULATION FOR DISMISSAL OF INTERLOCUTORY APPEAL

The Appellants having prosecuted an interlocutory appeal from the

of Civil Procedure, from the Order for Preliminary Injunction entered in this cause on January 30, 1963 by the United States District Court for the Middle District of Florida, Jacksonville Division, and in connection with said interlocutory appeal having filed and presented to this Court a Motion to Stay or Suspend said Order for Preliminary Injunction pending appeal, under the provisions of the Federal Rules of Civil Procedure and, specifically, Rule 62 thereof, and both the Appellants and the Appellees having presented argument to one of the Judges of this Court in connection with the Appellants' Motion to Stay or Suspend the Order for Preliminary Injunction from which this interlocutory appeal was taken by Appellants; and the Appellants being now desirous of abandoning and dismissing said interlocutory appeal; it is therefore

[fol. 68] STIPULATED and AGREED by and between the Appellants and the Appellee, under the provisions of Rule 20, of the rules of this Court, that an order be entered by any Judge, or Judges, of this Court, or by the Clerk of this Court, (1) dismissing Appellants' interlocutory appeal from the Order for Preliminary Injunction entered on January 30, 1963 by the United States District Court for the Middle District of Florida, Jacksonville Division, and (2) providing that each party to said interlocutory appeal shall bear and pay its own costs thereon expended.

Dated at Jacksonville, Florida, this 4th day of February, A.D. 1963.

Cox, Grissett, MacLean & Webb

By /s/ John S. Cox
630 Lynch Building
Jacksonville 2, Florida
Attorneys for Appellant,
Seaboard Air Line Railroad
Company

Ragland, Kurz, Toole & Martin

By /s/ Henry F. Martin, Jr.
703 Florida Theatre Building
Jacksonville 2, Florida
Attorneys for Appellant,
Atlantic Coast Line Railroad
Company

Bedell, Bedell & Dittmar

By /s/ C. Harris Dittmar
1520 Barnett National Bank
Bldg., Jacksonville 2, Florida
Attorneys for Appellee,
Florida East Coast Railway
Company

Mathews, Osborne & Ehrlich

By /s/ Raymond Ehrlich
1530 Lynch Building
Jacksonville 2, Florida
Attorneys for Appellees, Southern
Railway Company and Georgia
Southern and Florida Railway
Company

CLERK'S OFFICE: Pursuant to the foregoing Agreement and Stipulation the above entitled and numbered cause was duly entered dismissed, this 6th day of February, A. D., 1963, each party to bear and pay its own costs.

EDWARD W. WADSWORTH
Clerk of the United States Court
of Appeals for the Fifth Circuit

By /s/ G. F. GANUSHEAN
Deputy Clerk

A true copy

Test: EDWARD W. WADSWORTH, Clerk, U. S. Court of Appeals, Fifth Circuit

By /s/ G. F. GANUSHEAN
Deputy

New Orleans, Louisiana Feb 6 1963

[fol. 73]

[Stamp—Filed—Feb 20 1963—Jacksonville, Fla., Julian A. Blake, Clerk]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 63-16-Civ.-J

FLORIDA EAST COAST RAILWAY COMPANY, a corporation,

Plaintiff,

—vs.—

JACKSONVILLE TERMINAL COMPANY, a corporation, ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, SEABOARD AIR LINE RAILROAD COMPANY, a corporation, SOUTHERN RAILWAY COMPANY, a corporation, and GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY, a corporation,

Defendants.

MOTION TO DISMISS AND ANSWER OF DEFENDANTS, ATLANTIC COAST LINE RAILROAD COMPANY AND SEABOARD AIR LINE RAILROAD COMPANY

MOTION TO DISMISS

These defendants respectfully move this Honorable Court to dismiss plaintiff's Complaint herein on the following grounds:

1. Said Complaint fails to state a cause of action against these defendants upon which relief can be granted.

2. Said Complaint fails to state a cause of action against these defendants upon which equitable relief can be granted.

3. Said Complaint fails to state a cause of action against these defendants calling for or warranting injunctive relief.

4. It affirmatively appears from said Complaint that, if plaintiff has any cause of action at all, it has an adequate and complete remedy at law.

[fol. 74] 5. There is no equity in plaintiff's Complaint.

6. It affirmatively appears that plaintiff has failed to join indispensable parties.

ANSWER

Subject to disposition by this Honorable Court of the above and foregoing Motion to Dismiss, these defendants file this Answer to plaintiff's Complaint, and in answer to the allegations contained in said Complaint, these defendants say:

1. These defendants deny the allegations of Paragraph numbered 1 of said Complaint.

2. In answer to paragraph numbered 2 of said Complaint, these defendants deny that at the time of filing said Complaint the plaintiff was "a common carrier engaged in the transportation of passengers or property by railroad, within the meaning and application of Title 49, United States Code, Section 1, in interstate commerce," as alleged in said paragraph. These defendants also deny that at the time of filing said Complaint the plaintiff was a connecting line "with the others for the receiving, forwarding, and delivery of passengers or property, within the meaning and application of Title 49, United States Code, Section 3(4), upon and by use of the facilities for interchange of traffic located at Jacksonville, Florida", as alleged in said paragraph. These defendants admit the remaining allegations of said paragraph numbered 2 of said Complaint.

3. These defendants admit the allegations contained in paragraph 3 of said Complaint.

4. In answer to paragraph 4 of said Complaint these defendants admit the execution of the "Operating and Guaranty Agreement" referred to therein and further admit the authenticity of the copy of said "Operating and Guaranty Agreement" attached to said Complaint as "Exhibit A". These defendants also admit that said "Operating and Guaranty Agreement" has been in effect since the date of its execution and, by its terms, will remain in effect until December 1, 1977.

5. Answering paragraph numbered 5 of said Complaint, these defendants admit that up to the effective date and hour of the embargo placed by the plaintiff on all freight [fol. 75] and passenger traffic originating from or designated to any point on its railroad, these defendants did accord to plaintiff and its predecessors the equal right to use in common "for the accommodation of passenger and freight traffic in Jacksonville" all facilities of the defendant Terminal Company, together with the services provided by said Terminal Company for the control, movement, distribution, exchange and interchange of cars "used in the transportation of property", all as alleged in said paragraph numbered 5. However, these defendants aver that from and after the effective date and hour of said freight and passenger embargo, which was imposed by the plaintiff, and up to and including the time of the filing of said Complaint, the plaintiff was a non-operating common carrier and was not entitled to the use of the Terminal Company facilities and services "for the accommodation of passengers and freight traffic in Jacksonville", and therefore had no right under the "Operating and Guaranty Agreement" to the use of the facilities and services of the Terminal Company.

Further answering said paragraph numbered 5 of said Complaint, these defendants specifically deny that at the time of the filing of said Complaint the "use of the facilities and services of the defendant Terminal Company was the normal and necessary course of business and operation by plaintiff", as alleged in the last sentence of said paragraph.

6. Answering paragraph numbered 6 of said Complaint, these defendants specifically deny that they owed any duty whatsoever to the plaintiff by reason of Title 49, United States Code, Sections 1 and 3, from and after the effective date and hour of the plaintiff's self-imposed embargo on freight and passenger traffic and up to and including the time of filing by the plaintiff of its Complaint herein.

Further answering said paragraph numbered 6 of said Complaint, these defendants admit that at the time plaintiff's Complaint was filed herein these defendants under the provisions of the "Operating and Guaranty Agreement", owed to the plaintiff the duty to establish, observe and enforce as to plaintiff just and reasonable rules, regulations and practices in respect of car service and that these defendants under said agreement further owed plaintiff the duty of not observing and enforcing as against the plain-
[fol. 76] tiff any unjust or unreasonable rule, regulation and practice in respect of car service and further owed the duty to plaintiff not to make, give or cause any unjust or unreasonable preference or advantage to any party to said "Operating and Guaranty Agreement", all as alleged in subparagraphs (b), (c) and (e) of said paragraph numbered 6 of said Complaint. However, these defendants specifically deny that at the time of filing of plaintiff's Complaint herein they were under any duty to the plaintiff as set forth in subparagraphs (a) and (d) of paragraph numbered 6 of said Complaint.

7. Answering paragraph numbered 7 of said Complaint these defendants specifically deny that "all conditions have been performed and all events have occurred necessary to entitle plaintiff to continuance of such normal course of dealing and to performance by defendants of their respective duties hereinabove set forth" as alleged in said paragraph.

Further answering said paragraph numbered 7 of said Complaint, these defendants specifically deny that they violated their duties and plaintiff's rights in any respect.

Specifically answering subparagraph numbered (a) of said paragraph 7 of said Complaint, these defendants aver that they are without knowledge of the allegations contained therein and can therefore neither admit nor deny the same, but demand strict proof thereof.

Specifically answering subparagraph (b) of said paragraph numbered 7 of said Complaint, these defendants admit that on January 24, 1963 they notified the defendant Terminal Company that in view of the fact that the plaintiff was at that time strike-bound and under a self-imposed embargo on freight and passenger traffic, it was their position that the defendant Terminal Company should not accept or permit delivery of cars by plaintiff to the facilities of the defendant Terminal Company. These defendants admit that up to the lifting by the plaintiff of the aforesaid self-imposed embargo these defendants persisted in the aforesaid position and continued to persist in said position up to the time said self-imposed embargo was lifted by the plaintiff.

[fol. 77] Specifically answering subparagraph (c) of said paragraph numbered 7, these defendants admit the truth of the allegations thereof as of the time of the filing by plaintiff of its Complaint herein.

Specifically answering subparagraph (d) of paragraph 7 of said Complaint, these defendants aver that they are without knowledge as to the allegations contained therein and therefore can neither admit nor deny the same, but demand strict proof thereof.

8. These defendants admit the allegations of paragraph numbered 8 of said Complaint but aver that said allegations are immaterial, impertinent and irrelevant to the issues in this cause and should therefore be striken from said Complaint.

9. Answering paragraph numbered 9 of said Complaint these defendants admit that prior to the filing of this Complaint these defendants did not institute any action, claim or complaint in any court or tribunal with reference to

plaintiff's claimed right to use the facilities and services of the defendant Terminal Company.

Further answering said paragraph numbered 9 of said Complaint, these defendants specifically deny that they, either severally or jointly, induced the defendant Terminal Company to persist in its refusal to permit plaintiff to use the facilities and services of the defendant Terminal Company. These defendants further specifically deny that they committed or engaged in any wrongful and unlawful acts and conduct and further deny that they have in any way deprived the plaintiff of an opportunity to have the legality and propriety of any acts or conduct on the part of these defendants determined by any court.

10. Answering paragraph numbered 10 of said Complaint these defendants admit that at the time of filing said Complaint they were continuing to carry on their normal course of business and operations with respect to operations into and out of the premises of the defendant Terminal Company, but these defendants deny that at the time of the filing of said Complaint the plaintiff was being denied any of its rights under the "Operating and Guaranty Agreement" and under the Interstate Commerce Act.

[fol. 78] 11. Answering paragraph numbered 11 of said Complaint these defendants deny the allegations contained in the first sentence thereof; admit the allegations contained in the second sentence of said paragraph; deny the allegations contained in the third and fourth sentences of said paragraph.

12. These defendants specifically deny each and every allegation contained in paragraph numbered 12 of said Complaint.

RAGLAND, KURZ, TOOLE & MARTIN

By /s/ LOUIS KURZ
703 Florida Theatre Building
Jacksonville 2, Florida
Attorneys for Defendant,
Atlantic Coast Line Railroad
Company

Cox, Grissett, MacLean & Webb

By /s/ John S. Cox
630 Lynch Building
Jacksonville 2, Florida
Attorneys for Defendant,
Seaboard Air Line Railroad
Company

I Do Hereby Certify that copy of the above and foregoing Motion to Dismiss and Answer has been furnished to Messrs. Bedell, Bedell & Dittmar, 1520 Barnett National Bank Building, Jacksonville 2, Florida, Attorneys for Plaintiff; Messrs. McCarty, Adams & Foote, 801 Atlantic National Bank Building, Jacksonville 2, Florida, Attorneys for Defendant Jacksonville Terminal Company; and Messrs. Matthews, Osborne & Ehrlich, 1530 Lynch Building, Jacksonville 2, Florida, Attorneys for Defendants Southern Railway Company and Georgia Southern & Florida Railway Company, by United States Mail this 19th day of February, 1963.

/s/ John S. Cox
Attorney

[Stamp—Filed—Feb 25 1963—Jacksonville, Fla.—Julian A. Blake, Clerk]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA,
JACKSONVILLE DIVISION

No. 63-16-Civ.-J

FLORIDA EAST COAST RAILWAY COMPANY, a corporation,
Plaintiff,

vs.

JACKSONVILLE TERMINAL COMPANY, a corporation, ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, SEABOARD AIR LINE RAILROAD COMPANY, a corporation, SOUTHERN RAILWAY COMPANY, a corporation, and GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY, a corporation,

Defendants.

MOTION TO DISMISS AND ANSWER OF DEFENDANT, JACKSONVILLE TERMINAL COMPANY

MOTION TO DISMISS

Defendant, Jacksonville Terminal Company, moves the Court to dismiss the complaint on the following grounds:

1. The complaint fails to state a cause of action upon which relief can be granted.

2. It affirmatively appears from the complaint that the plaintiff has an adequate and complete remedy at law.

3. The complaint fails to state a ground against this defendant upon which the Court can grant injunctive relief.

4. It affirmatively appears that the plaintiff has failed to join indispensable parties.

[fol. 80] ANSWER

1. Defendant, Jacksonville Terminal Company admits the allegations in Paragraphs No. 1 to 6 of the complaint, except only the allegation in Paragraph 5 that the use by the plaintiff of the facilities and services of the defendant, Jacksonville Terminal Company, was the normal and necessary course of business, which this defendant denies.

2. Answering Paragraph 7, defendant, Jacksonville Terminal Company says that at the time complained of it had in force and effect, applicable alike to all parties, rules and regulations providing among other things: "Conductors, Flagmen, Enginemen, Firemen, and Hostlers and helpers of Tenant Lines must pass proper examination on interlocking and special instructions before being permitted to operate into and out of the Terminal," and this defendant says that at the time complained of the plaintiff was seeking to operate its trains or cars in the Terminal of Jacksonville Terminal Company under the control of Conductors, Flagmen, Enginemen, and Firemen who had not passed proper examination on the interlocking or on special instructions for the operation of trains and cars in this defendant's Terminal.

Further answering said Paragraph 7, this defendant says that at the time therein mentioned, this defendant was advised that the plaintiff had been subjected to a strike by its non-operating unions, and had further been advised that in the event this defendant should receive the cars and trains of the plaintiff in its terminal yards, that the striking employees of the plaintiff would picket Jacksonville Termi-[fol. 81] nal Company in such a manner as to require that all employees of Jacksonville Terminal Company reporting to work should pass picket lines, and this defendant was further advised and verily believed that its employees would not cross such picket lines, and that the picketing of its premises would be such that all railroad traffic into and out of its terminal would come to a stop. This defendant says that this threatened stoppage of all train service

would be in derogation of the defendant's obligation under provisions in the fourteenth section of its Operating and Guaranty Agreement requiring the Terminal Company to operate the passenger station and terminal facilities at all times during the life of said agreement in a manner satisfactory and acceptable to the railway companies, and looking to the safe and proper conduct of the business of the railway companies in and about said station and terminal facilities, and the operation of the trains of the railway companies upon the tracks of the Terminal Company; and further that such threatened stoppage of rail traffic through the station and terminal facilities of this defendant would have terminated or severely curtailed all passenger, freight, express, and mail business to the Jacksonville, Florida area and, to a large part, of the State of Florida, all of which would have resulted in a public calamity. Defendant, Jacksonville Terminal Company denies that it placed a switch engine of its yard in such a manner as to block the track on which plaintiff sought entry to its terminal.

[fol. 82] 3. Answering Paragraph 8, this defendant has no knowledge about things therein alleged, and neither admits nor denies same.

4. Answering Paragraph 9, defendant denies that it was induced to take the action complained of in Paragraph No. 7 by the Altantic Coast Line Railroad Company or by the Seaboard Air Line Railroad Company.

5. Answering Paragraph 10, this defendant says the strike of the plaintiff's non-operating employees and the embargo voluntarily imposed by the plaintiff of its rail traffic were responsible for the interruption of its business, and this defendant is informed and verily believes that its business and that of the other defendants was carried on in the normal course of business, except only from the interruption of interchange with the lines of the plaintiff.

6. Answering Paragraph 11, the defendant denies that it ousted the plaintiff from its rights as one of the joint

owners of the Jacksonville Terminal Company or deprived the plaintiff from performing its duties under the Operating and Guaranty Agreement.

7. Answering Paragraph 12, defendant is not advised, and neither admits nor denies things therein alleged, and [fol. 83] demands strict proof thereof.

Dated this 22nd day of February, A.D. 1963.

/s/ ELLIOTT ADAMS
Attorney for Defendant
Jacksonville Terminal Company
801 Atlantic Bank Building
Jacksonville, Florida

McCarthy, Adams & Foote
Of Counsel for Defendant
Jacksonville Terminal Company
801 Atlantic Bank Building
Jacksonville, Florida

I do hereby certify that copy of the above and foregoing Motion to Dismiss and Answer has been furnished to Messrs. Bedell, Bedell & Dittmar, 1520 Barnett National Bank Building, Jacksonville 2, Florida, Attorneys for Plaintiff; Messrs. Ragland, Kurz, Toole & Martin, 704 Florida Theatre Building, Jacksonville 2, Florida, Attorneys for Defendant, Atlantic Coast Line Railroad Company; Messrs. Cox, Grissett, MacLean & Webb, 630 Lynch Building, Jacksonville 2, Florida, Attorneys for Defendant, Seaboard Air Line Railroad Company, by United States Mail this 22nd day of February, 1963.

/s/ ELLIOTT ADAMS
Elliott Adams
801 Atlantic Bank Bldg.
Jacksonville, Florida

[fol. 182]

[Stamp—Filed—Sep 4, 1963—Jacksonville, Fla.—Julian A. Blake, Clerk]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA,

JACKSONVILLE DIVISION

No. 63-16-Civil-J.

FLORIDA EAST COAST RAILWAY COMPANY, a corporation,

Plaintiff,

vs.

JACKSONVILLE TERMINAL COMPANY, a corporation, ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, SEABOARD AIR LINE RAILROAD COMPANY, a corporation, SOUTHERN RAILWAY COMPANY, a corporation, and GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY, a corporation,

Defendants.

STIPULATION

The parties to the above-styled cause, having amicably compromised and settled between themselves their differences concerning the matters which are the subject of this stipulation, do, through their respective undersigned counsel, hereby stipulate, agree and consent to the entry of an order in said cause:

(1) dismissing with prejudice the plaintiff's claim for monetary damages asserted in its complaint against the defendants, Jacksonville Terminal Company, Atlantic Coast Line Railroad Company, and Seaboard Air Line Railroad Company;

(2) cancelling the bond, which was filed by plaintiff pursuant to the provisions of the Order for Preliminary In-

junction entered in this cause on January 30, 1963, and providing that the plaintiff and its surety are relieved and released from any and all liability under said bond, and from any and all liability to defendants, or either of them, by reason of the issuance of the said Order for Preliminary Injunction;

[fol. 183] (3) providing that said Order for Preliminary Injunction shall remain in full force and effect, and that all parties shall continue to be bound thereby until further order of the Court; and

(4) providing that this cause shall thereafter remain pending upon the sole issue of injunctive relief prayed for in plaintiff's original complaint.

Dated this 4th day of September, 1963, at Jacksonville, Florida.

Bedell, Bedell & Dittmar

By /s/ C. Harris Dittmar
1520 Barnett National Bank Building
Jacksonville, Florida 32202
Attorneys for Plaintiff

McCarthy, Adams & Foote

By /s/ Yartley Buchman
801 Atlantic National Bank Building
Jacksonville, Florida 32202
Attorneys for Defendant, Jacksonville Terminal Company.

Kurz, Toole, Maness & Martin

By /s/ L. Kurz
704 Florida Theatre Building
Jacksonville, Florida 32202
Attorneys for Defendant, Atlantic Coast Line Railroad Company.

Cox, Grissett, MacLean & Webb

By /s/ W. E. Grissett
630 Lynch Building
Jacksonville, Florida 32202
Attorneys for Defendant, Seaboard Air Line Railroad Company.

Mathews, Osborne & Ehrlich

By /s/ Walter R. Hediford
1530 Lynch Building
Jacksonville, Florida 32202
Attorneys for Defendants, Southern Railway Company and Georgia Southern and Florida Railway Company.

[fol. 184]

[Stamp—Filed Aug 20 1965—Jacksonville, Fla.—Julian A. Blake, Clerk]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA,
JACKSONVILLE DIVISION
No. 63-16-Civil-J.

FLORIDA EAST COAST RAILWAY COMPANY, a corporation,
Plaintiff,

vs.

JACKSONVILLE TERMINAL COMPANY, a corporation, ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, SEABOARD AIR LINE RAILROAD COMPANY, a corporation, SOUTHERN RAILWAY COMPANY, a corporation, and GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY, a corporation,
Defendants.

ORDER

This cause having come on to be heard upon the Stipulation between all the parties to this cause, which Stipulation has been filed herein and examined by the Court, and the Court being fully advised in the premises, it is thereupon

ORDERED and ADJUDGED as follows:

1. The plaintiff's claim for monetary damages asserted in its complaint against the defendants, Jacksonville Terminal Company, Atlantic Coast Line Railroad Company and Seaboard Air Line Railroad Company, be, and the same is hereby, dismissed with prejudice.

2. The bond which was filed in this cause by plaintiff, pursuant to the provisions of the Order for Preliminary Injunction entered in this cause on January 30, 1963, be and it is hereby cancelled, and the plaintiff and its surety on said bond be and they are hereby relieved and released from any and all liability under said bond and from any [fol. 185] and all liability to defendants, or either of them, by reason of the issuance of said Order for Preliminary Injunction.

3. The Order for Preliminary Injunction entered in this cause on January 30, 1963, shall remain in full force and effect and all parties hereto shall continue to be bound thereby until further order of this Court.

4. This cause shall hereafter remain pending upon the sole issue of injunctive relief prayed for in plaintiff's original complaint.

DONE and ORDERED in Chambers at Jacksonville, Florida, this 4th day of September, 1963.

/s/ WM. A. MCRAE, JR.
United States District Judge.

[fol. 186]

[Stamp—Filed Aug 20 1960—Jacksonville, Fla.—Julian A. Blake, Clerk]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

Case No. 63-16-Civil-J

FLORIDA EAST COAST RAILWAY COMPANY, a corporation,

Plaintiff,

vs.

JACKSONVILLE TERMINAL COMPANY, a corporation, ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, SEABOARD AIR LINE RAILROAD COMPANY, a corporation, SOUTHERN RAILWAY COMPANY, a corporation, and GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY, a corporation,

Defendants.

PETITION FOR INTERVENTION

COME NOW the BROTHERHOOD OF LOCOMOTIVE ENGINEERS, a labor organization; the BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization; the BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, a labor organization; the TRANSPORTATION AND COMMUNICATION EMPLOYEES UNION, a labor organization; the BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, a labor organization; the INTERNATIONAL ASSOCIATION OF MACHINISTS, a labor organization; the INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, ETC., a labor organization; the SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, a labor organization; the INTERNATIONAL BROTHER-

HOOD OF FIREMEN, OILERS, HELPERS, ROUNDHOUSE AND RAILWAY SHOP LABORERS, a labor organization; the BROTHERHOOD OF RAILROAD SIGNALMEN, a labor organization; the BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, a labor organization; the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, a labor organization, and the BROTHERHOOD OF RAILWAY CARMEN OF AMERICA, a labor organization, by and [fol. 187] through their undersigned attorneys, and pursuant to Rule 24 of the Federal Rules of Civil Procedure, move that the Court allow them to intervene as parties in the above styled suit, and would show the Court as follows:

1. That the Petitioners are railway labor organizations, national in scope, and are the duly designated, authorized and exclusive representatives, for the purposes of the Railway Labor Act, of all the employees employed in their respective crafts by each of the defendants.

2. That this Court on January 30, 1963 entered an Order for Preliminary Injunction in this cause directed toward the defendants, JACKSONVILLE TERMINAL COMPANY, a corporation, ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, and SEABOARD AIR LINE RAILROAD COMPANY, a corporation, and their officers, agents, servants and employees, enjoining and restraining said persons during the pendency of the instant litigation from refusing to accord to the Plaintiff, FLORIDA EAST COAST RAILWAY COMPANY, the services of all employees of the defendant, JACKSONVILLE TERMINAL COMPANY; from refusing to afford to the Plaintiff, FLORIDA EAST COAST RAILWAY COMPANY, reasonable, proper and equal facilities for the interchange of cars; and generally prohibiting the employees of the defendants from discriminating against, or refusing to perform or provide services for the FLORIDA EAST COAST RAILWAY COMPANY in any form or fashion.

3. That the FLORIDA EAST COAST RAILWAY COMPANY is currently engaged, under the Railway Labor Act, in a so-called "major labor dispute", also known as a lawful strike,

[fol. 188] with certain of your Petitioners, to-wit: the TRANSPORTATION AND COMMUNICATION EMPLOYEES UNION, a labor organization; the INTERNATIONAL ASSOCIATION OF MACHINISTS, a labor organization; the INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, ETC., a labor organization; the SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, a labor organization; the INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS, HELPERS, ROUNDHOUSE AND RAILWAY SHOP LABORERS, a labor organization; the BROTHERHOOD OF RAILROAD SIGNALMEN, a labor organization; the BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, a labor organization; the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, a labor organization, and the BROTHERHOOD OF RAILWAY CARMEN OF AMERICA, a labor organization. Said labor dispute has been adjudicated by the United States Court of Appeals, Fifth Circuit, in Case No. 21060, *Brotherhood of Locomotive Firemen and Enginemen, etc.* vs. *Florida East Coast Railway Company, et al*, decided June 8, 1965, —— F2nd ——, to be a lawful strike and a major dispute under the Railway Labor Act, and further, said labor dispute has been in continuous existence since January 23, 1963 and is now the longest railroad strike in the history of the American railroad industry.

4. That the Order of Preliminary Injunction entered on January 30, 1963 affects or may be construed as affecting the rights and duties of the employees of the defendants represented by your Petitioners, but was entered without either your Petitioners or the said employees having been made parties to said proceedings, or having been served [fol. 189] with any process or notice thereof. Representation of Petitioners' interests in these proceedings by existing parties is now, has been, and may be inadequate and Petitioners and the employees of the defendants represented by Petitioners may be bound by the judgment in this suit.

5. That the Order of Preliminary Injunction entered by this Court on January 30, 1963 is subject to an interpretation which may require the employees of the defendants which are represented by your Petitioners to cross the lawful and legally established picket lines established by certain of your Petitioners and to perform direct services for the FLORIDA EAST COAST RAILWAY in its day-to-day operations, all contrary to the rights of said employees under the said Railway Labor Act, 45 U.S.C.A. 151 et seq; the Norris-LaGuardia Act, 29 U.S.C.A. 100 et seq, and existing federal labor policy.

6. That insofar as said Order for Preliminary Injunction entered by this Court on January 30, 1963 purports or may be construed as requiring the employees of the defendants to cross the lawful picket lines established in regard to the major dispute which exists between certain of your Petitioners and the FLORIDA EAST COAST RAILWAY COMPANY, or to perform services for the Plaintiff, FLORIDA EAST COAST RAILWAY COMPANY, while said plaintiff is engaged in a strike arising out of a major dispute, such Order for Preliminary Injunction was entered without and beyond the jurisdiction of this Court, as was adjudicated by the United States Court of Appeals, Fifth Circuit, in Case No. 21060, *Brotherhood of Locomotive Firemen and Firemen* vs. *Florida East Coast Railway Company,* decided June 8, 1965.

[fol. 190] 7. That since the entry of said Order for Preliminary Injunction on January 30, 1963 there have been no further evidential hearings in this cause and by stipulation of the parties, the cause has remained pending in this Court and is now pending herein upon the sole issue of injunctive relief prayed for in plaintiff's original complaint as reflected by this Court's last Order entered in this cause on September 4, 1963. Since that date, September 4, 1963, no further proceedings have been taken by any of the parties to this cause, and the Order for Temporary Injunction apparently remains in effect pending a final hearing which has not yet been held and has not yet been set.

8. That until rendition of the decision of the United States Court of Appeals, Fifth Circuit, in Case No. 21060, on June 8, 1965, reversing the decision of the United States District Court for the Southern District of Florida in a factually similar case, the rights and legal obligations of your Petitioners and the employees that they represent in regard to the Order of Temporary Injunction entered by this Court on January 30, 1963 were uncertain, said rights and legal obligations having now been clarified by said Court of Appeals' decision.

9. The Petitioners wish to intervene in order to move this Court to dissolve, modify or clarify its Order for Preliminary Injunction of January 30, 1963 in light of the United States Court of Appeals' decision in Case No. 21060, in order to have resolved in orderly, legal fashion, the issue of whether said Order for Temporary Injunction purports [fol. 191] to affect the rights of the employees represented by your Petitioners to refuse to cross picket lines established pursuant to a strike arising out of a major dispute under the Railway Labor Act, or to refuse to perform services for the plaintiff while said plaintiff is engaged in such a strike. Petitioners' Motion to Dissolve or Modify or Clarify Order for Preliminary Injunction is being filed herewith, as required by Rule 24(c), F.R.C.P.

WHEREFORE, the Interveners respectfully pray that the Court grant this Petition for Intervention and grant such other relief as it may deem proper in the premises.

Respectfully submitted,

RUTLEDGE & MILLEDGE,
601 Flagler Federal Building,
111 N. E. First Street
Miami, Florida 33132
Attorneys for Petitioners

By /s/ NEAL RUTLEDGE
NEAL RUTLEDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Intervention was mailed this 19 day of August, 965 to:

BEDELL, BEDELL, DITTMAN & SMITH
1520 Barnett National Bank Building
Jacksonville, Florida
Attorneys for:
FLORIDA EAST COAST RAILWAY COMPANY

McCARTHY, ADAMS & FOOTE
801 Atlantic Bank Building
Jacksonville, Florida
Attorneys for:
JACKSONVILLE TERMINAL COMPANY

RAGLAND, KURZ, TOOLE & MARTIN
704 Florida Theatre Building
Jacksonville, Florida
Attorneys for:
ATLANTIC COAST LINE RAILROAD COMPANY

COX, GRISSETT, MacLEAN & WEBB
630 American Heritage Building
Jacksonville, Florida
Attorneys for:
SEABOARD AIR LINE RAILROAD COMPANY

MATTHEWS, OSBORNE & EHRLICH
1530 American Heritage Building
Jacksonville, Florida
Attorneys for:
SOUTHERN RAILWAY COMPANY, and
GEORGIA SOUTHERN AND FLORIDA
RAILWAY COMPANY

/s/ NEAL RUTLEDGE
Neal Rutledge

[fol. 193]

[Stamp—Filed—Aug 20 1965—Jacksonville, Fla.—Julian A. Blake, Clerk]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

CASE NO. 63-16-Civil-J

FLORIDA EAST COAST RAILWAY COMPANY, a corporation,

Plaintiff,

vs.

JACKSONVILLE TERMINAL COMPANY, a corporation, ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, SEABOARD AIR LINE RAILROAD COMPANY, a corporation, SOUTHERN RAILWAY COMPANY, a corporation, and GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY, a corporation,

Defendants.

MOTION TO DISSOLVE OR MODIFY OR CLARIFY ORDER FOR PRELIMINARY INJUNCTION

COME NOW the Interveners, the BROTHERHOOD OF LOCOMOTIVE ENGINEERS, a labor organization; the BROTHERHOOD

OF RAILROAD TRAINMEN, a labor organization, the BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, a labor organization; the TRANSPORTATION AND COMMUNICATION EMPLOYEES UNION, a labor organization; the BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, a labor organization; the INTERNATIONAL ASSOCIATION OF MACHINISTS, a labor organization; the INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, ETC., a labor organization; the SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, a labor organization; the INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS, HELPERS, ROUNDHOUSE AND RAILWAY SHOP LABORERS, a labor organization; the BROTHERHOOD OF RAILROAD SIGNALMEN, a labor organization; the BROTHERHOOD OF MAINTENANCE OF WAY [fol. 194] EMPLOYEES, a labor organization; the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, a labor organization; and the BROTHERHOOD OF RAILWAY CARMEN OF AMERICA, a labor organization, by and through their undersigned attorneys, and respectfully move that the Order for Preliminary Injunction entered in this cause on January 30, 1963 be dissolved or modified or clarified so as to provide that said Order does not operate to compel any employee of the defendants herein to perform services for the FLORIDA EAST COAST RAILWAY COMPANY or to cross the lawful picket lines established in regard to the existing and continuing major labor dispute between the Florida East Coast Railway Company and certain of its so-called non-operating striking employees. As grounds for said Motion, Interveners respectfully refer this Court to the decision of the United States Court of Appeals for the Fifth Circuit, in Case No. 21060, entitled *Brotherhood of Locomotive Firemen and Enginemen, et al,* vs. *Florida East Coast Railway Company, et al,* decided on June 8, 1965, —— F.2nd ——, holding that a United States District Court lacks jurisdiction to compel, by injunction, the employees of one carrier to cross the picket lines established by the striking employees of a connecting carrier engaged

in a strike arising out of a major dispute under the Railway Labor Act, or to compel such employees to perform services for said struck carrier.

RESPECTFULLY SUBMITTED,

RUTLEDGE & MILLEDGE
601 Flagler Federal Building
111 N. E. First Street,
Miami, Florida 33132
Attorneys for Interveners

By /s/ NEAL RUTLEDGE
NEAL RUTLEDGE

[fol. 195]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion to Dissolve or Modify or Clarify Order for Preliminary Injunction was mailed this 19 day of August, 1965 to:

BEDELL, BEDELL, DITTMAR & SMITH,
1520 Barnett National Bank Building,
Jacksonville, Florida
Attorneys for
FLORIDA EAST COAST RAILWAY COMPANY

MCCARTHY, ADAMS & FOOTE,
801 Atlantic Bank Building
Jacksonville, Florida
Attorneys for
JACKSONVILLE TERMINAL COMPANY

RAGLAND, KURZ, TOOLE & MARTIN,
704 Florida Theatre Building
Jacksonville, Florida
Attorneys for
ATLANTIC COAST LINE RAILROAD COMPANY

Cox, Grissett, MacLean & Webb,
630 American Heritage Building
Jacksonville, Florida
Attorneys for
Seaboard Air Line Railroad Company

Matthews, Osborne & Ehrlich,
1530 American Heritage Building
Jacksonville, Florida
Attorneys for
Southern Railway Company, and
Georgia Southern and
Florida Railway Company

/s/ Neal Rutledge
Neal Rutledge

[fol. 225]

[Stamp—Filed—Sep 21 1965—Jacksonville, Fla., Julian A. Blake, Clerk]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 63-16-Civil-J

FLORIDA EAST COAST RAILWAY COMPANY, a corporation,

Plaintiff,

vs.

JACKSONVILLE TERMINAL COMPANY, a corporation, ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, SEABOARD AIR LINE RAILROAD COMPANY, a corporation, SOUTHERN RAILWAY COMPANY, a corporation, and GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY, a corporation,

Defendants.

ORDER

This cause having come before the Court for hearing, after due notice, on the petition for intervention filed herein by thirteen labor organizations, it appearing to the Court that said petition for intervention is not timely and is otherwise defective, it is, upon consideration, ORDERED that the petition for intervention be and it is hereby denied.

DONE and ORDERED at Jacksonville, Florida, this 21 day of September, 1965.

/s/ WM. A. MCRAE, JR.
Judge

Copies to counsel

fol. 1]

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 63-16-Civil-J

FLORIDA EAST COAST RAILWAY COMPANY, a corporation,

Plaintiff,

—vs.—

ACKSONVILLE TERMINAL COMPANY, a corporation, ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, SEABOARD AIR LINE RAILROAD COMPANY, a corporation, SOUTHERN RAILWAY COMPANY, a corporation, and GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY, a corporation,

Defendants.

At Jacksonville, Florida

Before Hon. WILLIAM A. MCRAE, JR., Judge

Excerpts From Report of Proceedings Upon Application for Injunctive and Other Relief January 28, 29, 1963

EDWARD R. MACK, Official Reporter,
547 Federal Building,
Jacksonville, Florida.

---

fol. 284]

EXCERPT FROM ARGUMENT OF MR. ADAMS

* * * * * * *

All that has been done before, and we may reasonably ssume it may be done in the future. I think we may rea-)nably anticipate that it would be done if those men are

thwarted and if there is an attempt to force them to do something which they have been told by their Brotherhood not to do.

But a grievance against the men for not working—when they can come in and say that the company is seeking to force them to work under dangerous and hazardous conditions—might very likely support a legal and justifiable work stoppage. We cannot say.

It cannot be said with any reasonable certainty that there would not be a legal work stoppage by Jacksonville Terminal Company employees if they should attempt that under such circumstances.

Now, as to the picketing by the Florida East Coast employees: Mr. Bedell has said that that would constitute a secondary boycott. I understand a secondary boycott to be one which attempts to bring pressure on a third party with which the Union has no dispute to force that [fol. 285] third party to cease doing business with the employer of the striking union.

Mr. Bedell cited several cases yesterday afternoon on the question of secondary boycott and read the statement by Senator Taft as to the intent of the Amendment to the National Labor Relations Act excluding secondary boycotts from the operation of the National Labor Relations Act.

In passing I would just like to call to the attention of the Court that that does not relate to the National Labor Relations Act and not to the Railway Labor Act. Nowhere in the Railway Labor Act is that mentioned.

And the cases which Mr. Bedell cited—in 341 U. S. 675—which, I think, is *National Labor Relations Board* v. *Denver Trade Union*, and the *Local Union of Teamsters* v. *New York, New Haven and Hartford*, are cases under the National Labor Relations Act and not under the Railway Labor Act.

The Court: Let me ask you this question. Are you stating that, assuming the identical situation of fact except

not involving railroads, that then it would be a secondary [fol. 286] boycott?

Mr. Adams: That it would be a secondary boycott? No, I say that I don't think that we would be within the exemption on the secondary boycotts being legal. That is provided in the National Labor Relations Act.

Mr. Bedell's statement, as I remember it, was that the National Labor Relations Act had been amended so that secondary boycotts were not exempted from injunctive relief.

The Court: I am familiar with the Act.

Mr. Adams: Yes, sir.

The Court: From experience. My question was whether or not, if a factual situation like this should arise but the parties were not railroads—

Mr. Adams: Yes, sir.

The Court: —then I asked the question whether or not pickets put up by the party in the position of the F. E. C. would be engaged in a secondary boycott insofar as the [fol. 287] terminal is concerned?

Mr. Adams: Well, I think there is some question about that, Your Honor, and I will go into that because—

The Court: Well, I would like to ask you another question at this point also:

Of what importance, if any, in your opinion, is it to consider the legality of the activities of the F. E. C. striking employees or whether or not it was a secondary boycott?

Of what importance to this litigation is that?

Mr. Adams: Well, I think it is important to the Jacksonville Terminal Company because I think that the legality of that strike and whether or not it is a secondary boycott is an added—I won't say "reason"—an added force that had to be taken into consideration in reaching the decision which the company made to decline to accept any further movement from the Florida East Coast Railroad, under the circumstances as they existed.

They have the reasons that there was an embargo and a work stoppage and that the company was not in the

[fol. 288] course of the normal business of operating a railroad.

And, second, the point that the movement that they sent in there—and all anticipated movements could be anticipated to be unsafe operations in that they would not be operated by qualified men who knew the plant and who could operate a train safely through the plant. That is two points.

We have, then, the threat of the Jacksonville Terminal Company employees to cease work, with the probable justification that they would be forced to work under dangerous and hazardous conditions.

And now we have the further force—legal or not—that the Terminal Company would be picketed by employees of the Florida East Coast Railroad, which would constitute a situation where the employees of Jacksonville Terminal Company very likely would not cross the picket line. The employees of the other operating railroads would not cross the picket line. And that would bring a complete stoppage to the operations of the entire Jacksonville Terminal Company.

[fol. 289] The Court: Would it likewise be proper and correct to say that if the determination should be made—and on this I express no opinion—that this was a secondary boycott or an illegal picketing, that then you would not be impotent to protect yourself?

Mr. Adams: I would not be. But it is very difficult to determine what those facts will be because we don't know what course the Union might take to effectuate their purpose.

And in this respect I am really treading on eggs because, if this Court imposes an embargo and there is a picketing, then it will be my duty to get that picketing stopped.

The Court: You said "embargo." You meant "injunction"?

Mr. Adams: I meant "injunction." Excuse me.

No, I mean a picketing. It will be my duty to get an injunction to stop that picketing.

So here I am speaking out of one side of my mouth to say to the Court what the real threat is; and, on the other hand, tomorrow or the next day or next week, I may be [fol. 290] faced with the responsibility of saying nothing I have said today is real or true and that my case is entirely different.

But of course there are two sides to every case and it is my duty now, I think, to my client, to present to you what we see as the real dangers inherent in Florida East Coast employees coming there to picket.

In the first place, it is practically impossible to get an anticipatory injunction because we cannot anticipate what they are going to do.

If they should come down to Jacksonville Terminal Company with signs on the pickets and say, "We have a grievance against the Florida East Coast Railroad only and we are picketing against the activities of the Florida East Coast Railroad only and we don't want to interfere with the rights of anyone else to come on this property to work", then it is entirely possible—and if they remain on public property and away from the property of Jacksonville Terminal Company—it is entirely possible that we might be able to get an injunction against them.

They might come one step closer—I mean, we would [fol. 291] probably not be able to get an injunction against them.

They might come one step closer, one step farther, and commit acts which would constitute a violation of the rights of Jacksonville Terminal Company which might be subject to injunction.

But we have some other considerations to make:

Mr. Bedell has argued that the Florida East Coast owns one-fourth of the property of Jacksonville Terminal Company. The fact is that they own one-fourth of the capital stock.

The Union is going to come in there and say—just like Mr. Bedell has said—that the Florida East Coast owns the property and they are operating the property and "We have got a right to picket."

We say that the Jacksonville Terminal Company is a separate entity and corporation and operates its own business as an independent contractor under the terms and conditions of the Operating Agreement.

It is conceivable that it might be maintained that Jacksonville Terminal Company is nothing but the agent of the Florida East Coast in performing the functions and duties which it would be called upon to perform; to operate [fol. 292] the yards for the service of the Florida East Coast trains and cuts of cars for interchange.

And it is conceivable that the Union might say, "We can't effectively picket this agent of the Florida East Coast which is operating its property without picketing the entire yard."

Now, Your Honor, I hope there is room for argument both ways because I think that is a pretty strong case, and I think there is a real threat of a legal strike or legal picketing if the Union should seek to impose it on the property of the Jacksonville Terminal Company as constituting a part of the property of Florida East Coast, and the activities of Jacksonville Terminal Company as the operating agent for the purpose of servicing the yards and taking care of the trains and the cuts of trains and the movements of the railroad of the Florida East Coast in the yard.

Now those are matters that it would be difficult to decide until all the facts are proven—are pleaded and proven and testimony taken on them.

I cannot state it as a certainty but it is a real threat and it cannot be brushed aside by saying, "It is nothing but a secondary boycott."

[redacted]



INDEX

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statutes Involved	2
Statement	3
The Jacksonville Terminal	3
The Florida East Coast Strike	7
The Picketing of the Terminal	8
This Action	13
Summary of Argument	16
Argument	
I. The Proper Accommodation of the Norris-LaGuardia Act and the Railway Labor Act Indicates That This Case Should Not Be Held to Be One "Involving or Growing Out of a Labor Dispute" in Which an Injunction Would Be Barred by the Norris-LaGuardia Act	23
1. The statutory framework and the principle of accommodation	24
2. The absence of a "dispute" under, and the nonapplicability of the procedures of, the Railway Labor Act	30
3. Accommodation of the Acts by accommodating the concepts of "dispute" under them	36

Page

II. The Norris-LaGuardia Act, Even Considered Without Reference to the Railway Labor Act, Does Not Preclude the Grant of an Injunction Here 41

III. The Complaint in This Matter Stated a Claim Arising Under Federal Law and the Proofs Justified the Grant of the Limited Preliminary Injunction 50

Conclusion 65

Appendix

Statutory Provisions

1. The Railway Labor Act 1a
2. The Norris-LaGuardia Act 38a
3. LMRA §8(b)(4) 46a
4. Pertinent Provisions of the Interstate Commerce Act 48a

CITATIONS

CASES:

American Airlines, Inc. v. Air Line Pilots Ass'n, 169 F.Supp. 777 (S.D.N.Y. 1958) 28

American Airlines, Inc. v. Air Line Pilots Ass'n, 187 F.Supp. 643 (N.D.Ill. 1960) 39

American Steel Foundries v. Tri-City Council, 257 U.S. 184 (1921) 26

Bakery Sales Drivers Union v. Wagshal, 333 U.S. 437 (1948) 45, 46

Baltimore & Ohio R. Co. v. Chicago R. & I. R. Co., 170 F.2d 654 (7th Cir. 1948), cert. denied, 336 U.S. 944 (1949) 47

Page

Brotherhood of Locomotive Engineers v. Baltimore & Ohio R. Co., 372 U.S. 284 (1963) 25, 28
Brotherhood of Locomotive Engineers v. Louisville & N. R. Co., 373 U.S. 33 (1963) 28, 39, 51
Brotherhood of Railroad Trainmen v. Chicago River & I.R.Co., 353 U.S. 30 (1957) 27, 28, 30, 39
Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768 (1952) 28, 39, 51
Brotherhood of Railroad Trainmen v. Jacksonville Terminal Company, No. 244, O. T. 1966 ..... 16, 53
Brotherhood of Railroad Trainmen v. New York Cent. R. Co., 246 F.2d 114 (6th Cir. 1957), cert. denied, 355 U.S. 877 (1957) 31, 39, 51
Brotherhood of Railway Clerks v. Florida East Coast R. Co., 384 U.S. 238 (1966) 8, 13, 18, 25, 30, 35, 36, 51, 53, 64
Building Trades Council, 60 L.R.R.M. 1296 (NLRB, Oct. 25, 1965), appeal pending, 5th Cir. 56, 57

California v. Taylor, 353 U.S. 553 (1957) 40
Chicago, B.&Q.R.Co. v. Burlington C.R.&N.R. Co., 34 Fed. 481 (C.C.S.D. Iowa 1888) 61
Chicago & I.M.R.Co. v. Brotherhood of Railroad Trainmen, 315 F.2d 771 (7th Cir. 1963), vacated as moot, 375 U.S. 18 (1963) 38, 51
Chicago & N.W.Ry.Co. v. Toledo, P.&W.R.Co., 217 F.Supp. 64 (S.D.Ill. 1963) 47
Columbia River Packers Ass'n v. Hinton, 315 U.S. 143 (1942) 43

Dail-Overland Co. v. Willys-Overland, Inc., 263 Fed. 171 (N.D.Ohio 1920) 49
Duplex Printing Press Co. v. Deering, 254 U.S. 443 (1921) 48
District Council of Painters, 60 L.R.R.M. 1075 (NLRB, Sept. 7, 1965), enforcement ordered, 361 F.2d 70 (D.C.Cir. 1966) 56

Electrical Workers v. NLRB, 366 U.S. 667 (1961) 55, 56

Page

Elgin, J.&E.R.Co. v. Burley, 325 U.S. 711 (1945) 25, 28, 31, 32
Erie R. Co. v. Local 1286, 117 F.Supp. 157 (W.D.N.Y. 1953) 47
Ex parte Lennon, 166 U.S. 548 (1897) 51

Florida East Coast R. Co. v. Jacksonville Terminal Co., No. 63-16-Civ.-J., M.D. Fla. 61

Gomez v. United Office & Professional Workers, 73 F.Supp. 679 (D.D.C. 1947) 47
Gompers v. Buck's Stove & Range Co., 221 U.S. 418 (1911) 26
Graham v. Brotherhood of Locomotive Firemen, 338 U.S. 232 (1949) 28, 36, 51

Hitchman Coal & Coke Co. v. Mitchell, 245 U.S. 229 (1917) 26

Illinois Cent. R. Co. v. International Brotherhood, 90 F.Supp. 640 (W.D.La. 1950) 47

Keogh v. Chicago & N.W.R.Co., 260 U.S. 156 (1922) .. 49

Lakefront Dock & R.T.Co. v. International Longshoremen's Ass'n, 333 F.2d 549 (6th Cir. 1962) 39
Lauf v. E. G. Shinner & Co., 303 U.S. 323 (1938) 44
Local No. 438 v. Curry, 371 U.S. 542 (1963) 49
Local Union No. 25 v. New York N.H.&H.R.Co., 350 U.S. 155 (1956) 53
Loewe v. Lawlor, 208 U.S. 274 (1908) 26
Louisville & N.R.Co. v. Local Union No. 432, 104 F. Supp. 748 (S.D.Ala. 1952) 47

Manion v. Kansas City Terminal R. Co., 353 U.S. 927 (1957) 38
Marine Cooks and Stewards v. Panama S.S.Co., 362 U.S. 365 (1960) 44
Mayo v. Lakeland Highlands Canning Co., 309 U.S. 310 (1940) 50
Merchandise Warehouse Co. v. A.B.C. Freight Forwarding Corp., 165 F.Supp. 57 (S.D.Ind. 1958) 61

Page

Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc., 311 U.S. 91 (1940) 44
Millwrights Local No. 1102, 60 L.R.R.M. 1509 (NLRB, Dec. 6, 1965) 57
Montgomery Ward & Co. v. Consolidated Freightways, Inc., 42 I.C.C. 225 (1943) 61
Montgomery Ward & Co. v. Northern Pacific Terminal Co., 128 F.Supp. 475 (D.Ore. 1953) 61
New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552 (1938) 44
New York Cent. R. Co. v. United States, 201 F.Supp. 958 (S.D.N.Y. 1962), vacated as moot, 371 U.S. 805 (1962) 62
NLRB v. Business Machine Local 459, 228 F.2d 553 (2d Cir. 1955), cert. denied, 351 U.S. 962 (1956) .. 58
NLRB v. Denver Bldg. & Construction Trades Council, 341 U.S. 675 (1951) 53
NLRB v. John W. Campbell, Inc., 159 F.2d 184 (5th Cir. 1947) 59
Order of Railroad Telegraphers v. Chicago & N.W.R. Co., 362 U.S. 330 (1960) 29
Pacific Gamble Robinson Co. v. Minneapolis & St. L. Ry. Co., 85 F.Supp. 65 (D.Minn. 1949), appeal dismissed, 181 F.2d 812 (8th Cir. 1950) 47
Pan American World Airways, Inc. v. United States, 371 U.S. 296 (1963) 49
Pennsylvania R. Co. v. Railroad Labor Board, 261 U.S. 72 (1923) 25
Peoria & Pekin U.R.Co. v. United States, 263 U.S. 528 (1924) 60
Quaker State Motor Parts Co. v. Interstate Motor Freight System, 148 F.Supp. 226 (E.D.Pa. 1957) .. 61
Railroad Yardmasters v. Pennsylvania R. Co., 224 F.2d 226 (3d Cir. 1955) 28
Ruby v. American Airlines, Inc., 329 F.2d 11 (2d Cir. 1964), vacated as moot, 381 U.S. 277 (1965) 37

Page

Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962) 28
Southern R. Co. v. Brotherhood of Locomotive Firemen, 337 F.2d 127 (D.C.Cir. 1964) 28
Southern Steamship Co. v. NLRB, 316 U.S. 31 (1942) 59
Swift v. Tyson, 16 Pet. 1 (1842) 26

Teamsters Union v. Oliver, 358 U.S. 283 (1959) 44
Toledo, A.A.&N.M.R.Co. v. Pennsylvania Co., 54 Fed. 730, 746 (C.C.N.D. Ohio 1893), appeal dismissed, 150 U.S. 393 (1893) 61
Tunstall v. Brotherhood of Locomotive Firemen, 323 U.S. 210 (1944) 51

United States v. Corrick, 298 U.S. 435 (1936) 50
United States v. Hutcheson, 312 U.S. 219 (1941) 26, 45
United States v. United Mine Workers, 330 U.S. 258 (1947) 46
United Steelworkers v. NLRB, 376 U.S. 492 (1964) 53, 54, 55, 56, 57
Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951) 59

Virginian R. Co. v. System Federation, 300 U.S. 515 (1937) 17, 27, 28, 37

STATUTES:

Clayton Act, § 20, 38 Stat. 738 (1914), 29 U.S.C. § 52 26, 48

Interstate Commerce Act, §§1(4), 1(11), 1(15), 3(4) and 3(5), 24 Stat. 379 (1887), as amended, 49 U.S.C. §§1(4), 1(11), 1(15), 3(4) and 3(5) .....passim

Labor Management Relations Act:

Section 2, 29 U.S.C. §152 53
Section 7, 29 U.S.C. §157 49
Section 8(b)(4), 29 U.S.C. §158(b)(4) 2, 22, 49, 53, 55
Section 10(j), 29 U.S.C. §160(j) 33, 49
Section 303, 29 U.S.C. §187 33

Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C. §§101 et seq. .....passim

Page

Railway Labor Act, 44 Stat. 577 (1926), as amended, 45 U.S.C. §§151 et seq. ..... passim

Sherman Act, 26 Stat. 209 (1890), 15 U.S.C. §§1 et seq. 26, 45

28 U.S.C. §1254(1) 2

28 U.S.C. §1331 51

28 U.S.C. §1337 51

§704, Pub. L. 86-257, 73 Stat. 542 (1959) 53, 54

MISCELLANEOUS:

Circular CAD-87, Third Revision, Car Service Division, Association of American Railroads 63

Garrison, The National Railroad Adjustment Board: A Unique Administrative Agency, 46 Yale L.J. 567 (1937) 32

Gregory, Labor and the Law (2d ed. 1961) 26

Jacksonville Journal, Jacksonville, Florida, July 11, 1966, p. 1 41

The Washington Post, July 14, 1966, p. A-27 41

75 Cong. Rec. 5499 (1932) 27

105 Cong. Rec. 6666-67 (1959) 54

105 Cong. Rec. 15,531 (1959) 55

105 Cong. Rec. 15,532 (1959) 54

105 Cong. Rec. 17,898 (1959) 54

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 220

ATLANTIC COAST LINE RAILROAD COMPANY, JACKSONVILLE TERMINAL COMPANY, and SEABOARD AIR LINE RAILROAD COMPANY,

Petitioners,

—v.—

BROTHERHOOD OF RAILROAD TRAINMEN, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOWELL KENNEDY, T. C. BOLAND, and J. E. EASON,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit appears at R. 39-50, and the dissenting opinion at R. 50-58. They are not yet reported in the Federal Reporter.

The District Court did not enter an opinion in granting the limited preliminary injunction, but its order, containing its findings of fact and conclusions of law, appears at R. 27-31.

JURISDICTION

The judgment of the Court of Appeals was entered on May 24, 1966. (R. 38) The petition for certiorari was filed on June 11, 1966, and was granted on June 20, 1966. (R. 58) The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether, in the circumstances shown by the record in this case, the Norris-LaGuardia Act, either read together with the Railway Labor Act and the Interstate Commerce Act, or considered by itself, deprives the federal courts of jurisdiction to issue a limited injunction restraining unions on strike against one rail carrier from picketing other rail carriers not involved in any labor dispute and thereby disrupting their operations and services?

STATUTES INVOLVED

This case involves the Railway Labor Act, 44 Stat. 577 (1926), as amended, 45 U.S.C. §§ 151 *et seq.*; the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C. §§ 101 *et seq.*; Section 8(b)(4) of the National Labor Relations Act, as added by the Labor Management Relations Act, 61 Stat. 140 (1947), as amended, 29 U.S.C. § 158(b)(4); and Sections 1(4), 1(11), 1(15), 3(4), and 3(5) of the Interstate Commerce Act, 24 Stat. 379 (1887), as amended, 49 U.S.C. §§ 1(4), 1(11), 1(15), 3(4), and 3(5). These provisions are set forth in the Appendix.

STATEMENT

The Jacksonville Terminal.—The Jacksonville Terminal Company ("Terminal Company")[1] is a Florida corporation which operates a passenger and freight rail terminal facility in Jacksonville, Florida.[2] (R. 8-9) Through this terminal property, one of the principal throats of rail commerce in the southeastern United States, flow the routes of the Jacksonville gateway—the rail gateway into peninsular Florida. (R. 11-13) The two carriers whose lines make the main use of the terminal property are Atlantic Coast Line Railroad Company ("Coast Line") and Seaboard Air Line Railroad Company ("Seaboard"). Seaboard and Coast Line each operate throughout the southeastern United States in the six states of Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida. (R. 123) The two other railroads using the terminal facilities at the Jacksonville terminal are the Southern Railway System and the Florida East Coast Railway Company ("FEC"). (R. 9) The FEC's line runs down the east coast of Florida from Jacksonville to Miami. Each of these four carriers owns 25 per cent of the stock of the Terminal Company. (R. 81, 83)

The Jacksonville terminal is the rail gateway into Florida. (R. 11-15) Ninety-five per cent of the United States mail carried into or out of Florida—two million

[1] The Terminal Company is a "carrier" under the Interstate Commerce Act, § 1(3), 49 U.S.C. § 1(3).

[2] Certain of the facilities in the area of the Terminal Company are owned by that Company; others are owned by the individual railroads who operate into, out of, and through the terminal area. The Atlantic Coast Line Railroad Company's largest switching yard, system-wide, is located adjacent to the Terminal Company property (R. 152) and all main line moves of the Coast Line originating, terminating or passing through Jacksonville go through it.

sacks each month—is handled through the Jacksonville terminal. (R. 115, 123, 125) In addition, a major portion of the freight carried in and out of peninsular Florida by rail passes through the Jacksonville terminal. (R. 12-13, 63-65) The Coast Line and the Seaboard are, together with the FEC, the three rail carriers serving peninsular Florida. (R. 8-9, 15-17) The FEC serves only the east coast of Florida and not central Florida and the Gulf coast of Florida—such as the Tampa area—whose sole rail service is by the Seaboard and the Coast Line. The freight movements handled through the Jacksonville terminal involve shipments to markets throughout the country of large quantities of perishables, such as the Florida crops of citrus and other fruit and fresh vegetables[3] (R. 63-65, 123); and shipments of many other nonperishable commodities on the movement of which the industrial economy of Florida depends, and on which manufacturing and farming enterprises in other parts of the country rely for raw materials and for mineral fertilizer. (R. 9, 11-13, 16)

It is perhaps somewhat misleading, to the person not familiar with railroading language, to call the Jacksonville terminal property a "terminal" because it is to a great extent not only a place where freight or passenger movements begin or end, but a place *through* which freight or passengers move by rail, either as part of a move on a single carrier or by means of an interchange between carriers. The Coast Line's routes are such that virtually all the freight carried by Coast Line *on its own lines* to and from the Florida peninsula passes through—and must pass through—the terminal property.[4] (R. 11-12, 65, 130, 131)

---

[3] The peak 30-day period for citrus shipping was on when the picketing, described below, commenced. (R. 64, 123)

[4] The map at page 9, below, illustrates how the Coast Line's movements on its own line through Jacksonville pass through the

Moreover, Seaboard's line through Jacksonville goes through the terminal property.[5] (R. 15, 183) A substantial amount of all freight carried by Seaboard *on its own lines* to and from the Florida peninsula, and virtually all the freight carried by Seaboard on its own lines to and from the industrial complex of Duval County (in which Jacksonville is located), passes through Jacksonville and hence through the terminal property.[6] (R. 9, 16-17, 136) And it is necessary in all cases for the Seaboard's freight trains to go through the Jacksonville terminal property if cars are to be cut out for interchange or to be added in Jacksonville. (R. 134-35)

Besides these extensive moves of freight which pass through the terminal property on the lines of Coast Line or of Seaboard without interchange, there is also a substantial amount of interchange of freight between lines which is carried on in the terminal property, as one of the principal junction points of the southeast United States. The Coast Line and the Seaboard interchange freight with each other at this point. (R. 64, 65) These

---

terminal property. Coast Line's line is denoted in red. The line from Richmond to Tampa enters the terminal property at McQuade Street and exits therefrom at Dennis Street.

[5] The map at page 9 shows the Seaboard Jacksonville line passing through the terminal property in blue. The line, which runs from Savannah, Georgia to Miami via western Florida, enters the terminal property at Acorn Street and exits therefrom at Stockton Street.

[6] Terminal Company employees do not actually handle cars moving in the terminal area, except those moving to the industries located in the terminal area; movements rather are handled by employees of the carrier which brought the cars into the terminal, and these employees also throw those switches which are manually operated. Terminal Company employees operate the automatic switching systems in the terminal area. This allocation of functions prevails both on through movements by a single carrier and on interchange movements. (R. 64-65, 109, 110)

two carriers there interchange freight with the Southern; and, there is also interchange between the other carriers and the FEC. (R. 65)—The FEC's line runs up the east coast of Florida and terminates at the north bank of the St. Johns River in Jacksonville. Its yards are located some twelve miles on the other side of the St. Johns River from the Jacksonville terminal yards. Those of its cars which are destined north of its lines are brought from its yard across the river into the terminal properties and there interchanged with carriers serving points north of Jacksonville.[7] (R. 70, 120-21)

In addition to the freight handled for private shippers, the carriers moving through the Jacksonville terminal carry extensive amounts of freight destined for military bases in Florida, including a large number of movements destined to the missile and space installations at Cape Kennedy.[8] (R. 64, 125)

Coast Line and Seaboard each operates extensive passenger service to and from Florida, connecting the state and its resort areas with the population centers of the North. All these passenger moves, aggregating 42 trains per day, pass through the Jacksonville terminal. (R. 77, 124, 134) The FEC runs only one passenger train each day in each direction to and from Miami, commencing or terminating at the Jacksonville terminal.[9] (R. 78)

---

[7] Except in the case of "interchanges" in which the Terminal Company takes cars from the FEC which are destined to the industries adjacent to the terminal area and delivers them to those industries. (R. 110)

[8] To be sure, those rail movements destined for Cape Kennedy must be interchanged with the FEC, which serves the Cape (R. 131), but the Seaboard and the Coast Line must bring this freight into the Jacksonville terminal to interchange it.

[9] As previously indicated, the FEC's yards at the northern extremity of its line are some twelve miles south, and across the

Carriers other than the FEC are the principal users of the Jacksonville terminal property. Less than six-tenths of one per cent of all passenger cars handled annually through the Jacksonville terminal are handled for the FEC, and about 70 per cent of all freight cars handled through the terminal annually are for railroads other than the FEC.[10] (R. 13, 107, 109)

The Florida East Coast Strike.—The Florida East Coast Railway Company—which is not a party to this suit—has

---

river from downtown Jacksonville. The only passenger station in Jacksonville is the one on the Terminal Company's property. (R. 122) Accordingly, the single daily passenger service in each direction which FEC operates to and from Miami is brought across the St. Johns River from the FEC's Bowden yards into the terminal property, where the Jacksonville passenger station is located. (R. 93)

Terminal Company employees service the passenger engines and the coaches of FEC while they are in the terminal on this daily move (R. 91) and perform minor repairs for this passenger equipment on this occasion. (R. 40, 91) Similar services are performed by Terminal Company for the passenger trains of the other carriers. (R. 133) Since the FEC passenger moves are a trivial part even of the total passenger service provided into the terminal by all carriers, these activities amount to an infinitesimal portion of the functions of the Jacksonville terminal. The cars so serviced amounted to 642 of the 955,891 cars handled in the Jacksonville terminal in 1965. (R. 13) They were about one-half of one per cent of the cars actually worked on by the Mechanical Department of the Terminal Company. (R. 113) Indeed, however these services may be stressed in respondents' legal theory, it does not appear that elimination of them is the real goal of respondents in this matter. See p. 13, n. 18, *infra*.

[10] In 1965, 231,787 freight cars were handled through the terminal for the account of FEC and 512,185 for the account of other railroads. In February 1966, the figures as to freight cars were 17,956 for FEC and 41,400 for other railroads. As to passenger movements, the figures show an even greater imbalance. In the year 1965, only 642 cars were handled for the FEC and 211,277 for the other railroads. For February 1966, the figures were 96 cars for the FEC and 16,614 for the other railroads. (R. 13)

Moreover, as to the freight actually interchanged within the property in a sample month, only 30 per cent of the interchanges were interchanges to which FEC was a party. (R. 109)

been involved in labor disputes with its employees for years. For over three years, it has been in the grips of a strike by its nonoperating employee unions. The history of the nonoperating unions' dispute, and the situation created by it, is outlined in this Court's Opinion in *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co.*, 384 U.S. 238 (1966). As of April 24, 1966, certain of the FEC's operating unions—the Brotherhood of Railroad Trainmen ("BRT"), the Order of Railway Conductors and Brakemen ("ORC&B"), and the Brotherhood of Locomotive Firemen and Enginemen ("BLF&E")—also went on strike against the FEC. (R. 140-42)

The Picketing of the Terminal.—Without warning, a few hours before dawn on May 4, 1966, the BRT, ORC&B and BLF&E threw a picket line composed of FEC employees or exemployees around the Terminal Company's property.[11] (R. 62) The map facing this page shows the places at which the pickets were stationed. (R. 72-75) In short, the pickets were stationed at every entrance to the terminal, whether for passengers, employees or freight, and also at every public crossing around the perimeter of the terminal where train or switching movements may enter the terminal property from the outside.[12] (R. 10, 16-17, 72-75, 135-136) This picketing included, without exception, crossings where the only trackage was under the sole control and ownership of either Coast Line or Sea-

[11] The actual pickets were BRT members. (R. 144-45) At the hearing in the District Court, a BRT officer admitted that the names of the other two brotherhoods were on the signs carried by the pickets but were covered with a tape. (R. 150-51; see, *e.g.*, R. 167)

[12] Ironically enough, apparently because there is no public crossing at the point where the bridge across the river from the FEC's line enters the Terminal property, the only entrance used by FEC car movements into the Terminal property was not picketed. (R. 70-75, 121, 183)

board." (R. 10, 16-17, 71, 136) This included crossings where the entering cars would not be those involved in interchange with the FEC, but which would be handled solely by the Coast Line or by the Seaboard into, through and beyond the terminal area.[14] (R. 130)

The text of the picket signs carried by the FEC employees is set forth in the margin[15] and appears in various photographs in the record, most clearly at R. 167. The first words of exhortation on the signs were plain and unmistakable: "Do Not Cross."

As soon as the picket line was thrown up, operations within the terminal area began to grind to a halt. (R. 10-

---

[13] See the map, p. 9. These crossings were the Coast Line's Dennis Street, and the Seaboard's Stockton Street and Acorn Street crossings.

[14] Cars entering or leaving the Terminal area by the Dennis Street crossing are those which move as parts of train movements along the Coast Line's main line to Sanford and Tampa, Florida. (R. 130) These trains run up and down the central and western Florida Peninsula, parallel to the FEC's line running up the east coast of Florida, and it is most improbable that any cars which would be involved in interchange with the FEC would enter at this crossing. Moreover, inasmuch as the entrance in question is solely one over which main line trains pass, the Coast Line "road crews" who would encounter the pickets at this point would not be those who would be involved in interchange with the FEC; this function would be performed by the Coast Line switching crews after the road crew had brought the train through the Terminal property and into the Coast Line yard. The record on these points could be further developed on a hearing with respect to a permanent injunction.

[15]

"FELLOW RAILROAD MEN
DO NOT CROSS OR ASSIST FEC
B OF RT
ON LEGAL
STRIKE
AGAINST FEC
PLEASE MAKE COMMON CAUSE WITH US
IN MAJOR DISPUTE AGAINST FEC"

11) While those employees who were already on duty in the terminal continued to work out their shift (R. 65, 79), subsequent shifts reporting for work, whether employed by the Terminal Company or the Seaboard or Coast Line, declined to cross the picket line. (R. 10, 17, 62-63, 76, 112, 134-35) Moreover, train movements operated by the Coast Line and the Seaboard whose employees report for work at places other than the Terminal property—including trains coming from as far as Richmond, Virginia[16]—declined to cross the picket line that had been set up at the places where the Seaboard's and Coast Line's tracks entered the terminal from the outside. (R. 62-63, 134)

The net effect was to threaten a complete standstill of all activity within the terminal area; not simply the handling of interchanges with the FEC, but the principal activities of the terminal which do not involve the FEC at all: the movements handled for the account of the Seaboard and the Coast Line, and the through moves by those carriers. It became swiftly apparent that all movement of mail, freight, express and passengers through or within the terminal would come to a halt within a few hours. (R. 11) In addition, the picketing threatened to halt operations of the Terminal Company itself which provides terminal services to Coast Line, Seaboard and other carriers and which also provides direct service to approximately 20 industrial shippers who have located in or adjacent to the terminal area. (R. 9, 10-11, 13-14, 79, 138)

The threatened effect of the picketing upon the mails, in and of itself, was disastrous. Ninety-five per cent of all Florida mail was affected; for each 24 hours during

[16] "Our [Coast Line's] train No. 375, which was en route from Richmond to Jacksonville, had been stopped at McQuade Street because the crews would not cross the picket line." (R. 62-63)

which the Terminal Company's mail department is shut down, six days are required to catch up. (R. 116) The picketing posed a ruinous threat to the movement of Florida's perishable fruits and vegetables. (R. 12, 119) The picketing in this way, and otherwise, threatened to create serious economic loss not only to the Jacksonville community but to the entire economy of Florida. (R. 9, 12-13, 16)

Businesses dependent upon rail services were threatened by the picketing. One case in point was that posed by the Railway Express Agency which adjoins the Terminal Company property and which is dependent upon petitioners' services. Not only is the Agency a substantial employer of labor in the Jacksonville area (R. 117), but its services to other businesses are of great significance. In March 1966 alone, the Agency handled over 2,200,000 in-and-out parcels at Jacksonville, none of which was for the account of the FEC. (R. 117) During the picketing, the Agency had six cars at its platform which it could not get moved into the terminal yard, and it had 16 cars in the terminal yard which it could not get moved to its platform, inasmuch as all rail access to the Agency was through tracks owned by the Terminal Company. (R. 119)

Not only was the technique of the picketing plain—to prevent any crossing of the perimeter of the Terminal property by employees of Seaboard, Coast Line or Terminal Company or by any Seaboard or Coast Line trains —but its purposes were plain and indeed frankly admitted.—Of course, neither Coast Line nor Seaboard nor Terminal Company has any dispute with any of its own employees.[17] (R. 11, 127, 136, 149, 150) Nor were the

[17] Terminal Company has its own employees and separate labor agreements with the pertinent brotherhoods. (R. 96-97, 111)

respondents picketing them because their wages or working conditions were substandard or because respondents desired to unionize them. Respondents have no complaint on any of these scores.—The purpose of the picketing, simply stated, was to make Coast Line, Seaboard and Terminal Company hurt badly enough to be willing to levy an embargo on the FEC. The respondents admitted in testimony in the District Court that if the petitioners stopped interchange operations with the FEC, the picketing would be halted. (R. 146) Indeed, even in this Court the position was plainly and openly taken that if the petitioners imposed an embargo upon the FEC the picketing would cease.[18]

This Action.—The present action was commenced during the course of the day on May 4, 1966 by petitioners against the three operating unions who were responsible for the picketing and against certain of their officers and members. (R. 1-8) The complaint was based on the Interstate Commerce Act and the petitioners' duties thereunder[19] and their corresponding rights to seek removal of

---

[18] In their unsuccessful opposition to the grant of a stay in this Court (Memorandum of Respondents in Opposition to Petitioners' Application for an Order Staying Proceedings on the Mandate, etc., pp. 18-21), respondents stated that the petitioners would obtain relief from the problems confronting them through the picketing if they were to proceed to embargo the FEC, *i.e.*, decline to interchange cars with that carrier.

This suggestion puts into perspective the occasional make-weight of the respondents that the terminal is a place of business of the FEC because its single daily passenger train uses the passenger station in the terminal and its passenger engines and coaches are there serviced by Terminal Company employees. These functions would not be affected by an embargo; yet the respondents are evidently willing to call off the picketing without their cessation. See p. 58, *infra*.

[19] See *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co.*, *supra*, 384 U.S., at 244-45.

obstructions to the performance of those federally imposed duties. It recited the facts relevant to the interruption of the commerce of Seaboard, Coast Line and Terminal Company which the picketing had created, stressed the duties of the petitioners to perform services to the public under the Interstate Commerce Act, and to participate in interchange activities under that Act (R. 2-3), and recited the absence of any labor dispute between petitioners and their employees. (R. 5) The complaint prayed for preliminary and permanent injunctive relief against picketing at any entrance or exit used by petitioners' employees in movements on foot or on railway cars in and out of the terminal property. (R. 6-7)

A limited temporary restraining order, enjoining picketing except at the gate to the Terminal Company property designated for use by FEC employees—a gate which had been so designated for the past three years[20]—was entered by the District Court on May 4, 1966 after a contested hearing at which oral testimony was taken. (R. 18-21) The District Court promptly entered an order setting May 9, 1966 as the date for the hearing on the application for a preliminary injunction. (R. 26)

After a further contested hearing at which additional oral testimony was received, the District Court on May 10, 1966, granted a preliminary injunction, limited, as had been the temporary restraining order, to the places designated for employees other than those of the FEC to enter the premises. (R. 27-31)

---

[20] At the terminal, one gate—the Bay and Stuart Streets gate—is designated for the use of FEC employees and another for the use of employees of the Terminal Company and the other interstate carriers. (R. 10, 79-80) For the signs at the gates, see the photos at R. 174 and 175.

The District Court found that, unless restrained, the activities of respondents

> "... will cause incalculable damage upon innocent parties other than plaintiffs, in that most of the Atlantic Coast Line passenger service into or out of the State of Florida will be eliminated; most of the passenger traffic of Seaboard Air Line Railroad Company into and out of the City of Jacksonville, Florida, will be eliminated; most of the freight traffic of Atlantic Coast Line Railroad Company into and out of the State of Florida and substantially all of the freight traffic of Seaboard Air Line Railroad Company into and out of Duval County, Florida, will be eliminated—all to the great detriment of the general public; that the transportation and processing of the mails into and out of the State of Florida will be severely obstructed and hampered; that many rail passengers will be prevented from traveling by rail; and that military bases served by plaintiffs will be adversely affected." (R. 29)

The respondents appealed from the order granting the preliminary injunction to the Court of Appeals for the Fifth Circuit. (R. 32) The Court of Appeals entertained the appeal on an expedited basis, hearing argument on May 23, 1966. (R. 35) At the close of argument, the Court of Appeals orally stated that it was reversing the judgment of the District Court, and an order reversing the judgment was, the next day, May 24, 1966, entered by the Court of Appeals by a two-to-one vote, on the theory that the Norris-LaGuardia Act ... deprives the Federal courts of jurisdiction to enter an injunction such as was issued by the trial court...." (R. 38) The Court of Appeals ordered

its mandate to issue forthwith (R. 38), denying a motion to stay its mandate.[21] (R. 36-37)

On application to Mr. Justice Black, referred by him to the whole Court, this Court, by a five-to-three vote on June 6, 1966, reinstated, pending certiorari, the limited preliminary injunction issued by the District Court. 384 U.S. 967. As required in a condition of that order, the petition for certiorari was filed on June 11, 1966. The petition was granted on June 20, 1966. (R. 58)

SUMMARY OF ARGUMENT

I. This case should not be held to be one "involving or growing out of a labor dispute" under the Norris-LaGuardia Act, when that Act is read together with the Railway Labor Act. Where the innocent carriers picketed are not parties to any "dispute" within the meaning of the Railway Labor Act, the case should not be held to be one within the scope of the Norris-LaGuardia Act.

---

[21] Inasmuch as this action by the Court of Appeals would have permitted immediate resumption of the picketing at the Terminal Company, with consequent disruption of its operations, the Terminal Company, on May 23, 1966, the day of the Court of Appeals' announcement, commenced a suit for an injunction in the Duval County, Florida, Circuit Court against the respondents. The Complaint in that suit was based exclusively on Florida law. A temporary injunction was granted on May 30, 1966, by the Circuit Court after a contested hearing. Although appellate remedies were available in the Florida courts, respondents instead filed a Suggestion for a Writ of Prohibition from the Florida District Court of Appeal, which was denied without opinion on June 8, 1966. The respondents then filed a petition for certiorari in this Court to review the District Court of Appeal's denial of the Suggestion for Writ of Prohibition, and that petition is pending under the name of *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Company*, No. 244, O.T. 1966. For a statement of the pertinent facts involved, see the Brief in Opposition in that matter, pp. 3-7. A hearing on the question of issuing a permanent injunction took place before the Circuit Court of Duval County, on July 29, 1966, and a limited permanent injunction issued.

1. The Railway Labor Act is a detailed, comprehensive code looking toward the settlement of all "disputes" concerning railway labor, and providing procedures aimed at averting disruptions of vital interstate transportation services. It was recognized from the time of the passage of the Norris-LaGuardia Act in 1932 that the provisions of that Act and the anti-injunction provisions of the Railway Labor Act would have to be accommodated. And thus it is that a long line of decisions of this Court, from *Virginian R. Co.* v. *System Federation,* 300 U.S. 515 (1937), through the present day, hold that injunctive relief may be granted to carry out the processes and the purposes of the Railway Labor Act, notwithstanding the more general provisions of the Norris-LaGuardia Act.

2. The controversy between the petitioners and respondents as to whether petitioners should cease interchanging cars with the FEC and embargo that carrier is not a "dispute" to which the Railway Labor Act's processes relate. There is simply no labor dispute between the petitioner-carriers and the men who are picketing them; there are no procedures in the Railway Labor Act available to petitioners that would give them a chance to compromise the controversy between them and respondents—assuming that there could lawfully be such a compromise consistent with the petitioners' duties under the Interstate Commerce Act.

Under these circumstances, to hold the Norris-LaGuardia Act applicable would be to ascribe to Congress an absurdity: that although the elaborate, time-consuming procedures of the Railway Labor Act must be exhausted before there can be an interruption of regular rail service arising out of a dispute between a carrier and its employees, a similar interruption may occur overnight when there is no such dispute. To say that respondents can disrupt the

performance of petitioners' duties as interstate carriers at will, simply because petitioners are strangers to the dispute between respondents and the FEC, is to thwart the express purposes of the Railway Labor Act, which seeks to avoid "any interruption to commerce or to the operation of any carrier engaged therein" and to provide procedures "for the prompt and orderly settlement of all disputes," without in any way furthering the purposes of the Norris-LaGuardia Act. While, to be sure, the use of economic weapons by one party to a railway labor dispute against the other, once the procedures provided in the Railway Labor Act have been exhausted and self-help is available, may often have adverse consequences to the public, it is another matter to say that economic warfare and self-help may be used against carriers who are not parties to the original dispute, in order to disrupt their commerce. Only recently, this Court, in *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co.*, 384 U.S. 238, 246-48 (1966), indicated that the scope of self-help measures available to a party to a railway labor dispute must be circumscribed to avoid the disruption of relationships not directly involved in the subject matter of the dispute; that decision points the way to decision here.

3. The extraordinary result sought by respondents here —that neither mediation provisions, administrative procedures, nor judicial remedies are available to prevent the disruption of petitioners' commerce—does not follow. It is, rather, necessary to harmonize the concept of "involving or growing out of a labor dispute" as used in the Norris-LaGuardia Act and the concept of a "dispute" under the Railway Labor Act. Such a harmonizing interpretation is supported not only by the long tradition of accommodation of those two statutes by this Court, but by the

wording of the operative provisions of the two statutes, and by the statutory purposes. Where there is no "dispute" with respect to which the parties may invoke the conciliatory procedures of the Railway Labor Act, the case should not be held to be one "involving or growing out of a labor dispute" under the Norris-LaGuardia Act.

The scheme established by Congress to contain the forces of labor strife in the railway industry in the Railway Labor Act would be set at naught if there were any room for the escalation of economic warfare against carriers not involved in the dispute, such as that attempted here. If it is held that there is a gap between the provisions of the Norris-LaGuardia Act and of the Railway Labor Act which would put the picketing involved here beyond the reach of a federal court's processes, the operations of virtually every rail terminal in the United States could be shut down every time one carrier was involved in a strike with its employees. Here, cars originating on, or finally destined to, points on the FEC's lines are interchanged and reinterchanged at various terminal points throughout the United States; under respondents' theory, all these terminals could be picketed and closed down. This Court's decisions on the accommodation of the Norris-LaGuardia Act and the Railway Labor Act indicate that there is no such statutory gap.

II. While the Court need not reach the point, the Norris-LaGuardia Act, even considered without reference to the Railway Labor Act, does not preclude the grant of an injunction here. As the Court of Appeals correctly pointed out, no decision of this Court holds the anti-injunction provisions of the Norris-LaGuardia Act applicable to a situation of the sort presented by the picketing here.

The touchstone of the Norris-LaGuardia Act for these purposes is Section 13(c) and its definition of "labor dispute." A labor dispute includes "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment." While the employer-employee relationship need not exist between the disputants, the fact remains that for there to be a "labor dispute" there must be persons who have a dispute over the matters mentioned.

The Coast Line, the Seaboard, and the Terminal Company have no labor dispute either with their employees or with the respondents. None of their "terms and conditions of employment" are called in question by the respondents. Neither is there any representation dispute. The only controversy petitioners have with the respondents is the fact that the respondents would like them to embargo the FEC. This, however, is neither a controversy "concerning terms or conditions of employment" nor one concerning the "association or representation of persons in negotiating . . . conditions of employment."

Similarly, this case is not, within the meaning of Sections 13(a) and 13(b) of the Norris-LaGuardia Act, one between "persons participating or interested" in a "labor dispute." This is, essentially, because no redress of labor grievances is sought against the Coast Line, the Seaboard, or the Terminal Company.

The statement of purpose and the legislative history of the Norris-LaGuardia Act unite in confirming that this is not the sort of controversy that was meant to be within its ban on the granting of injunctions. Lastly, it would be paradoxical at this late date, nineteen years after Con-

gress has set the face of national labor policy against secondary conduct such as this through passage of the Labor-Management Relations Act, for this Court to hold for the first time that in the areas not covered by that Act federal authority is powerless to prevent interruptions of commerce of this kind. While a decision harmonizing the Railway Labor Act and the Norris-LaGuardia Act, as we urge in point I, would obviate the need for a holding on this point, we submit that in any event the Norris-LaGuardia Act should not be held at this late date to make the federal courts powerless to act against secondary conduct of the sort involved here.

III. The complaint in this matter stated a claim arising under federal law and the proofs justified the grant of the limited preliminary injunction.

1. The complaint stated a claim under the Interstate Commerce Act and the Railway Labor Act, and hence the jurisdiction of the District Court was properly invoked. The Interstate Commerce Act imposes an extensive set of duties upon petitioners to furnish transportation service. It has been repeatedly held that there is jurisdiction in the federal courts over suits to remove obstructions to the performance of that duty. Likewise, it has been repeatedly held that there is jurisdiction in the federal courts to consider claims of violations of the purposes and policies of the Railway Labor Act. The complaint was also grounded on this basis.

2. The picketing here was unlawful as a matter of federal law on three separate bases, any one of which would be by itself an adequate justification of the limited preliminary injunction.

A. The picketing, as we have demonstrated in part I, above, violated the purposes and policies of the Railway Labor Act and was properly enjoinable on that ground.

B. Moreover, the actions of the respondents, which caused detriment to the public and interference with the petitioners' public duties, were without legal justification in that they violated the national labor policy as set forth in the Labor-Management Relations Act. Although that Act does not in terms apply here, the courts cannot ignore its clear expression of national public policy in labor matters in judging the legality of secondary conduct of the sort involved here. The picketing here was the sort of conduct which clearly violates the terms of Section 8(b)(4) of the Act and the cases construing it. The injunction carefully preserved the right to picket at the gate at the terminal used by the FEC primary employees. The picketing at the other gates represents the clearest sort of proscribed secondary activity.

C. Finally, the picketing here in question is unlawful because it seeks to have petitioners commit acts in violation of their statutory duties under the Interstate Commerce Act. That Act imposes a duty upon the petitioners to continue interchange operations with the FEC. That duty is enforceable by mandatory injunction, and in fact the FEC has obtained such an injunction against petitioners here. The suggestion of respondents that petitioners are legally free to levy an embargo against the FEC is without substance. No case supports the proposition that the existence of a strike on a connecting carrier is a valid reason for the declaration of an embargo. The strike has not caused any physical, operating condition of the sort which the authorities indicate will justify the levying of an embargo; it is not the strike, but the sec-

ondary picketing by respondents in their effort to cause the embargo which created the disruption in the terminal area. It would be paradoxical to say that picketing is lawful when it seeks to induce the imposition of an embargo when the only thing which is alleged to justify the imposition of that embargo is the picketing itself. Moreover, acceptance of the proposition that an embargo may lawfully be levied against a struck carrier, upon picketing by that carrier's employees of its connecting lines, would be to assume that the statutory policy of the United States is in favor of the escalation of railway labor disputes, not their containment. Its acceptance would mean that a strike on one carrier would automatically escalate into an incident of regional or national proportions. The policies both of the Interstate Commerce Act and of the Railway Labor Act require a contrary conclusion.

ARGUMENT

I. THE PROPER ACCOMMODATION OF THE NORRIS-LAGUARDIA ACT AND THE RAILWAY LABOR ACT INDICATES THAT THIS CASE SHOULD NOT BE HELD TO BE ONE "INVOLVING OR GROWING OUT OF A LABOR DISPUTE" IN WHICH AN INJUNCTION WOULD BE BARRED BY THE NORRIS-LAGUARDIA ACT

The picketing in this case is believed to be unique[1] in recent railway-labor-relations history—picketing, by employees of a struck carrier, against a group of innocent

[1] As cited at pp. 38-39, *infra*, there have been certain cases which approach the situation presented by this case, generally involving picketing of terminal or transfer facilities. In all of them an injunction was granted; this case is a stronger one. None of these cases seems to have involved the potential disruption of through rail commerce involved in this case; none goes so far as to involve a rail union seeking to have one rail carrier embargo another.

carriers whose labor relations have been peaceful and who have no labor dispute with their own employees, in an effort to induce those carriers to impose an embargo upon the struck carrier. The novelty of this action, and its potentially disruptive effects in the rail transportation industry, counsel the need to make a careful accommodation of the policies of the Railway Labor Act and the Norris-LaGuardia Act. We urge that in that accommodation the facile holding[1] of the Court of Appeals that the Norris-LaGuardia Act applied should be rejected, and that under the circumstances presented it should be held that, where there is no "dispute" to which the innocent carriers are a party cognizable under the Railway Labor Act, the case, as far as they are concerned, should not be held to be one "involving or growing out of a labor dispute" for the purposes of the Norris-LaGuardia Act.

1. *The statutory framework and the principle of accommodation.*—There are two basic substantive statutes governing labor relations in interstate commerce. One is the Labor Management Relations Act ("LMRA"), which applies to industry generally, including manufacturing and service concerns. The other is the Railway Labor Act, which applies to the essential transportation industries—the railroads and the airlines. The Railway Labor Act is the more limiting of the two—in response to the needs of the subject matter, it puts closer constraints on the behavior of unions and managements. Relationships in the manufacturing and service industries under the LMRA are essentially governed through contract; relationships

[1] The entire discussion of the Court of Appeals of the necessity to accommodate the Railway Labor Act and the Norris-LaGuardia Act was as follows: "We deem the argument based upon the Railway Labor Act to be without substance." (R. 49-50)

under the Railway Labor Act are more in the nature of status or "community," as this Court has put it;[3] terms and conditions of employment are fixed in a variety of ways besides contract, by practice, custom, or the like; they may be changed only by following the prescribed procedures of the Act; collective bargaining contracts generally have no termination dates; a compulsory arbitration procedure is provided for so-called "minor disputes" or grievances, whether or not the parties have ever agreed to binding arbitration;[4] major disputes over prospective terms and conditions of employment are subject to lengthy mediation efforts by a standing agency of the government;[5] self-help is permitted the parties not as soon as a collective bargaining contract expires, but only upon the unsuccessful termination of negotiations and exhaustion of statutory procedures arising out of notices under Section 6 of the Act.[6] These procedures reflect the clear purpose of Congress "to avoid any interruption to commerce or to the operation of any carrier engaged therein" (§ 2, 45 U.S.C. § 151a), and, to that end, to provide in detail for the regulation of the labor-management relationship in an area which was recognized from an early date as one presenting particular perils to the national economy in the case of work stoppages. *Cf. Pennsylvania R. Co.* v. *Railroad Labor Board*, 261 U.S. 72, 79 (1923).

---

[3] *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co.*, *supra*, 384 U.S., at 246. Indeed, many important details of the relationship are spelled out in the statute itself.

[4] Section 3, 45 U.S.C. § 153; *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711 (1945).

[5] Section 5, 45 U.S.C. § 155.

[6] 45 U.S.C. § 156. See *Brotherhood of Locomotive Engineers* v. *Baltimore & Ohio R. Co.*, 372 U.S. 284, 289-90 (1963).

The Norris-LaGuardia Act was passed in 1932 against a backdrop of the federal courts, in the absence of any federal statutory labor policy with respect to industries other than the transportation industry, imposing their own notions of labor policy and granting injunctions to break strikes in labor disputes. Gregory, *Labor and the Law* (2d ed. 1961), pp. 184-99. This had been done in diversity suits under the regime of *Swift* v. *Tyson*, 16 Pet. 1 (1842),[7] and in suits applying the Sherman Act to labor unions;[8] despite the Clayton Act's apparent ban on such injunctions (Section 20, 38 Stat. 738, 29 U.S.C. § 52)

At the time of the passage of the Norris-LaGuardia Act, it was recognized that, at the very least, there would have to be an accommodation between the provisions of that Act and the Railway Labor Act, which, as originally passed in 1926, was the first general substantive federal statute providing a code for labor relations, and which stood as the only such substantive statute in 1932.—Thus, Congressman Lankford of Virginia asked, during the floor debates: "Does this make it possible for lack of an injunction to tie up railroads and prevent them from transporting milk, for instance?"

To which Congressman LaGuardia replied: "[T]he railroad labor act . . . takes care of the whole labor situation pertaining to the railroads. They could not possibly come under this for the reason that we provided the machinery there for settling labor disputes."

---

[7] *See, e.g., American Steel Foundries* v. *Tri-City Council*, 257 U.S. 184 (1921); *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U.S. 229 (1917).

[8] *See, e.g., Loewe* v. *Lawlor*, 208 U.S. 274 (1908); *Gompers* v. *Buck's Stove & Range Co.*, 221 U.S. 418 (1911); *cf. United States* v. *Hutcheson*, 312 U.S. 219 (1941).

After which the following dialogue occurred: Mr. Lankford: "It [the bill at hand] does not apply to the transportation of . . . necessities that go in interstate commerce?"

Mr. LaGuardia: "Interstate traffic is entirely covered in the railroad labor act of 1926." (75 Cong. Rec. 5499 (1932))

This indicated and necessary accommodation of the two statutes—subordinating where necessary the unqualified general propositions of the Norris-LaGuardia Act to the more specific provisions of the Railway Labor Act[9]—has been performed by this Court ever since. Thus it is that this Court has stated: "We hold that the Norris-LaGuardia Act cannot be read alone in matters dealing with railway labor disputes. There must be an accommodation of that statute to the Railway Labor Act so that the obvious purpose in the enactment of each is preserved. We think that the purposes of these Acts are reconcilable." *Brotherhood of Railroad Trainmen* v. *Chicago River & I. R. Co.*, 353 U.S. 30, 40 (1957).[10] And accordingly this Court and the lower courts have repeatedly held that injunctive relief may be granted to carry out the policies and purposes of the Railway Labor Act, notwithstanding the Norris-LaGuardia Act.

It is held that, even in the presence of a dispute, as defined in the Railway Labor Act, and a "labor dispute" as

---

[9] *Virginian R. Co.* v. *System Federation*, 300 U.S. 515, 563 (1937).

[10] There are no express repealers of the provisions of the Norris-LaGuardia Act in the Railway Labor Act, despite that Act's revision in 1934 after the passage of the Norris-LaGuardia Act. The legislative history of the 1934 Act does not appear to evidence any express intention as to how the two statutes should be accommodated, although obviously they must. The process of accommodation has accordingly been left to—and as the cases cited demonstrate, repeatedly performed by—this Court.

defined in the Norris-LaGuardia Act, an injunction may issue to carry out the purposes of the Railway Labor Act. *Brotherhood of Railroad Trainmen* v. *Chicago River & I. R. Co., supra; Brotherhood of Locomotive Engineers* v. *Louisville & N. R. Co.*, 373 U.S. 33 (1963); *Virginian R. Co.* v. *System Federation*, 300 U.S. 515, 562-63 (1937); *Southern R. Co.* v. *Brotherhood of Locomotive Firemen*, 337 F.2d 127, 131-33 (D.C. Cir. 1964); *Railroad Yardmasters* v. *Pennsylvania R. Co.*, 224 F.2d 226, 228 (3d Cir. 1955); *American Airlines, Inc.* v. *Air Line Pilots Ass'n*, 169 F. Supp. 777, 787-88 (S.D.N.Y. 1958); see *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, 725 (1945); *Brotherhood of Locomotive Engineers* v. *Baltimore & Ohio R. Co.*, 372 U.S. 284, 290 (1963); *Graham* v. *Brotherhood of Locomotive Firemen*, 338 U.S. 232, 237-40 (1949); *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U.S. 768 (1952).[11] Indeed, the very first case construing the interrelationship between the Railway Labor Act and the Norris-LaGuardia Act, *Virginian R. Co.* v. *System Federation, supra*, stated, with respect to a mandatory injunction ordering collective bargaining with the certified representative of the carriers' employees: "It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provi-

[11] A quite different approach is applied by this Court with respect to the accommodation of the LMRA and the Norris-LaGuardia Act. Unlike the Railway Labor Act, the LMRA contains certain express provisions effecting partial *pro tanto* repeals of the Norris-LaGuardia Act. This Court, in the light of these specific repealers, and of a legislative history found to suggest a conscious design not to go further in superseding the Norris-LaGuardia Act, has followed the approach of a strict construction of the repealers of the Norris-LaGuardia Act in the LMRA, and has declined to extend them by implication. *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, 204-05, 205-10 (1962). As the Court observed in *Sinclair Refining*, in discussing the *Chicago River* case, "[I]n *Chicago River* we were dealing with a statute [the Railway Labor Act] that had a far different legislative history than the one now before us." *Id.*, at 211.

sions are found not to conflict with those of § 2, Ninth, of the Railway Labor Act, authorizing the relief which has been granted."[12] 300 U.S., at 563. And the necessity to accommodate the two statutes has been felt even in those cases where injunctions have been held barred by the Norris-LaGuardia Act.[13]

The purposes of the Railway Labor Act are all-important to this matter. After the passage of the Norris-LaGuardia Act, the Railway Labor Act was extensively revised in 1934 to make more pervasive its procedures for the voluntary—and indeed in some cases the compulsory—compromise of disputes which might lead to an interruption of rail commerce. See 48 Stat. 1185 (1934).[14] The Act, as amended, is expressly designed to accomplish the following objectives:

> "(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein;
>
> • • • • •

---

[12] Of course, Section 2 *Ninth* does not expressly authorize any remedy at all for a carrier's failure to treat with the certified bargaining representative, nor does it contain any provision expressly purporting to make any repeal of the Norris-LaGuardia Act.

[13] Thus, even in the case which represents the high-water mark of Norris-LaGuardia Act abstention in a railway labor dispute, this Court's five-to-four decision in *Order of Railroad Telegraphers* v. *Chicago & N.W.R.Co.*, 362 U.S. 330 (1960), this Court reversed the Court of Appeals' issuance of an injunction only after finding that the union's strike had followed a request made by the union under § 6 of the Railway Labor Act, for bargaining on certain matters, held by the Court to be lawful bargaining subjects under that Act, and after holding that the railroad had declined to bargain as to those matters. Thus, the denial of the injunction against the strike was completely in accord with the purposes of the Railway Labor Act. 362 U.S., at 339.

[14] See *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, 725-28 (1945).

"(4) To provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions;

"(5) To provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." Section 2, as amended, 45 U.S.C. § 151a.

To achieve these purposes, the amended Act creates an array of boards, and it provides a comprehensive code of procedures for settlement of disputes by conference, negotiation, mediation, arbitration, and conciliation. "[T]he procedures of the Act are purposefully long and drawn out, based on the hope that reason and practical considerations will provide in time an agreement that resolves the dispute." *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co., supra,* 384 U.S., at 246. Or, as this Court said in the *Chicago River* case, "Congress acted [in passing the Norris-LaGuardia Act] to prevent the injunctions of the federal courts from upsetting the natural interplay of the competing economic forces of labor and capital. Rep. LaGuardia, during the floor debates on the 1932 Act, recognized that the machinery of the Railway Labor Act channeled these economic forces, in matters dealing with railway labor, into special processes intended to compromise them." 353 U.S., at 40-41.

2. *The absence of a "dispute" under, and the nonapplicability of the procedures of, the Railway Labor Act.*— The present controversy between the respondents and the petitioners as to whether they should embargo the FEC is not, however, a dispute to which the Railway Labor Act's

processes relate.[15]—Where were the Act's processes of compromise here? The Coast Line, the Seaboard, and the Terminal Company never met the men who picketed them, or their representatives, and were never asked to meet with them to "compromise" any "dispute" which they might have had with them, before they saw the men picketing their operations at 3:00 a.m. in the morning of May 4, 1966.—And, in point of fact, they had and have no dispute with them to compromise.

The "special processes intended to compromise" the economic powers of the FEC and the brotherhoods were simply not available to the petitioners. The "procedures of the [Railway Labor] Act are purposefully long and drawn out, based on the hope that reason" will provide a solution; but the fact of the matter is that the Coast Line, the Seaboard, and the Terminal Company have never had any access to the procedures of the Act or any chance to participate in the "reasoning" that would provide a solution to the controversy in which the pickets, strangers to them, seek to embroil them. They have neither any dispute with their employees nor any control over the attitudes of the FEC toward labor problems; indeed, by now it should be obvious that they do not share—as indeed the railway industry generally does not share—the approach

[15] The Railway Labor Act provides procedures for the settlement of minor disputes—those relating to the meaning or proper application of a particular term of an existing contract or practice—and major disputes—those relating to disagreements over the terms and conditions of employment which are to govern subsequent relations between the parties. See *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, 722-24 (1945); *Brotherhood of Railroad Trainmen* v. *New York Cent. R. Co.*, 246 F.2d 114 (6th Cir. 1957), *cert. denied*, 355 U.S. 877 (1957). There is simply no machinery in the Act for settling controversies between a carrier and employees of other carriers.

of the FEC to labor relations.[16] And with respect to the respondents' demand that petitioners embargo the FEC, it appears that any attempt to "compromise" that demand would violate petitioners' duties under the Interstate Commerce Act.[17]

Under these circumstances, to hold that the commerce of the Seaboard, the Coast Line, and the Terminal Company may be disrupted overnight, and their duties under the Interstate Commerce Act to provide rail transportation as common carriers placed beyond protection from the federal courts, is to ascribe an absurdity to Congress: that, although the elaborate procedures of the Railway Labor Act must be exhausted before there can be an interruption of regular rail service arising out of a dispute

---

[16] A perceptive commentator once described the railroad world for which the Railway Labor Act was designed as follows: "The railroad world is like a state within a state. . . . This state within a state has enjoyed a high degree of internal peace for two generations; despite the divergent interests of its component parts, the rei[illegible] of law has been firmly established." Garrison, *The National Ra[illegible]ad Adjustment Board: A Unique Administrative Agency*, 46 Yal[illegible] J. 567, 568-69 (1937). As Mr. Justice Frankfurter once observed, after quoting from that commentary: "The Railway Labor Act of 1934 is an expression of that 'reign of law' and provides the means for maintaining it. . . . It is fair to say that every stage in the evolution of this railroad labor code was progressively infused with the purpose of securing self-adjustment between the effectively organized railroads and the equally effective railroad unions and, to that end, of establishing facilities for such self-adjustment by the railroad community of its own industrial controversies." *Elgin, J. & E. R. Co.* v. *Burley, supra*, 325 U.S., at 752 (dissenting opinion).—The Seaboard, the Coast Line, and the Terminal Company had no access to any "reign of law" in this matter before the pickets interrupted their operations. They had no opportunity for "self-adjustment" of any controversy with the respondents; indeed, they have no labor dispute with the respondents. It is only through the powers of a federal court that the "reign of law" which Congress contemplated in the Railway Labor Act can be preserved here.

[17] See the discussion in part III2C, pp. 59-64, *infra*.

between a carrier and its employees, a similar disruption may occur overnight when there is no such dispute.—As we demonstrate in part III, the depths of that absurdity increase when it is considered that Congress has made enjoinable similar behavior on the part of unions within industries which are not generally so much affected by the public interest as the rail transportation industry.[18]

If there had been a dispute cognizable under the Act, petitioners would have had the opportunity and the duty to confer with the representatives of *their* employees in an effort to reach a practical and reasonable solution of the problem; the services of the National Mediation Board to assist in that solution would have been available to them; they would have had the opportunity to consider any proffer of binding arbitration of the dispute made by the Board; and if—and the present case presents a clear situation for the exercise of such a remedy—an Emergency Board had been convened under Section 10 of the Railway Labor Act with respect to such a dispute in which petitioners were involved, they would have had the benefit of a further consideration of their position by the Board and

[18] To be sure, that injunction under the LMRA may only be obtained by the National Labor Relations Board. §10(j), 29 U.S.C. § 160(j). But this does not detract from the fact that Congress made such conduct subject to injunction, and, indeed, made it conduct as to which labor unions would have to respond in damages in federal court. See LMRA § 303, 29 U.S.C. § 187. Obviously, the injunctive remedy was restricted to the Board in recognition of the Board's general powers to administer the details of the statutory scheme which Congress had set up under the National Labor Relations Act and the LMRA for industries other than the rail and air transport industries. But in the railroad industry there is no administrative agency with similar powers, and the result is that unless the equity jurisdiction of the federal courts is invocable by the carriers, conduct which Congress has made enjoinable if conducted in a manufacturing or service industry will be free of injunction if conducted so as to interrupt rail transportation. See pp. 53-59, *infra*.

the chance to consider whether that Board's recommendations should be accepted by them with a view to ending the dispute. In the present case the petitioners had none of these rights and were parties to none of these procedures. Nonetheless, they are subjected to picketing which has the effect of halting their operations and are given an ultimatum of imposing an embargo on the FEC in an effort to influence the FEC's position in a controversy with which they are not concerned.

To say that respondents can disrupt the performance of petitioners' duties as interstate carriers at will, simply because petitioners are strangers to the dispute between respondents and the FEC, is to thwart the express purposes of the Railway Labor Act, to avoid "any interruption to commerce or to the operation of any carrier engaged therein," and to provide procedures "for the prompt and orderly settlement of all disputes," without in any way furthering the purposes of the Norris-LaGuardia Act. The position of respondents requires the Court to reach the conclusion that, because of an asserted variance in the concept of "involve or grow out of a labor dispute" [19] in the Norris-LaGuardia Act and the concept of "dispute,"

---

[19] The basic restrictions of the Norris-LaGuardia Act upon the grant of injunctions by the federal courts are couched in the following terms: "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case *involving or growing out of any labor dispute* . . ." §§ 4, 7, 29 U.S.C. §§ 104, 107 (emphasis supplied). Thus, the definition of "labor dispute," which, we contend, in this case must be read in conjunction with the provisions of the Railway Labor Act, is critical in determining whether the grant of an injunction is precluded by the Norris-LaGuardia Act. See pp. 36-41, *infra*.

As we discuss in part II below, even apart from the provisions of the Railway Labor Act, the Norris-LaGuardia Act's definition of labor dispute should not be read as precluding the grant of an injunction in this situation.

and the procedures specified for the settlement of "disputes" in the Railway Labor Act, a huge gap was left in the statutory scheme—to be discovered and exploited by respondents for the first time in 1966—and that in this gap neither administrative procedures nor judicial remedies are available to forestall a sudden disruption of vital rail service.

This would be an extraordinary result. It is not explainable by the bland assertion of respondents (Brief in Oppositon to Certiorari, p. 8) that: "The unleashing of the parties to engage in economic warfare has serious consequences to third parties to the dispute and to the public, but this is the necessary and inevitable result of the plan which Congress has devised for the resolution of these disputes."—It is no such thing. When the parties have exhausted the detailed procedures of the Railway Labor Act they are free to employ economic weapons against each other, which, to be sure, will have in many cases an effect on third parties and on the public; but it has never before been suggested that at this juncture the parties to a railway labor dispute have the right to escalate the dispute by applying direct economic warfare against carriers or labor unions not involved in the dispute. Indeed, this Court has recently circumscribed the effect on the public of a dispute between a carrier and certain unions, ripened to the point where self-help was available to the parties, by a decision delimiting the use of what were essentially self-help measures by the carrier against other unions. *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co., supra,* 384 U.S., at 246-48. Similarly, there can be no power in a union to escalate its dispute with one carrier into a "labor dispute" with other carriers, and claim the freedom from injunction which the Norris-LaGuardia Act bestows on "labor disputes." As this Court said in

Brotherhood of Railway Clerks, "self-help" may become "available to both sides of the labor-management controversy" at a prescribed point under the Act (*id.*, at 245), but the Act does not contemplate the use of self-help otherwise than upon the other "side of the labor-management controversy."—Indeed, the Court there indicated that "the strike"—not some more escalated form of economic warfare—is "the ultimate sanction of the union." *Id.*, at 244.

3. *Accommodation of the Acts by accommodating the concepts of "dispute" under them.*—The extraordinary result, contended for by respondents, that neither mediation processes, administrative procedures nor judicial remedies are available to petitioners in this case,[20] does not follow. Rather, it should be held that since this case does not involve or grow out of a dispute between the petitioner carriers on the one hand and the respondent unions on the other which is cognizable under the procedures of the Railway Labor Act, it does not "involve or grow out of a labor dispute" within the meaning and purpose of the Norris-LaGuardia Act, and that consequently the Norris-LaGuardia Act does not bar a limited injunction of the type granted by the District Court.[21]

The wording of the operative provisions of the two statutes supports such a parallel, harmonizing construction. The Norris-LaGuardia Act defines "labor dispute" as including "any controversy concerning terms or conditions

---

[20] For the details of respondents' position that there is no court or administrative agency, federal or state, with jurisdiction over their conduct, see pp. 53-54, n. 2, *infra*.

[21] Alternatively, it could be held that, whether or not there was a "labor dispute" within the meaning of the Norris-LaGuardia Act, accommodation with the policies of the Railway Labor Act precluded application of the Norris-LaGuardia Act's bar against injunctions. See *Graham* v. *Brotherhood of Locomotive Firemen*, 338 U.S. 232, 237-38 (1949).

of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment." Section 13(c), 29 U.S.C. § 113(c). The Norris-LaGuardia Act accordingly covers (i) controversies over "terms and conditions of employment" and (ii) controversies over what might be called "representation" matters.

Both of these subject matters are dealt with in detail in the Railway Labor Act. In the Railway Labor Act, the "minor dispute" and "major dispute" provisions cover all controversies concerning the "terms and conditions of employment"; procedures are provided for "the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions," with self-help available only after those procedures are exhausted; and for the "prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions," where a compulsory procedure is provided. See §§ 2(4), 2(5), 3, and 6, 45 U.S.C. §§ 151a(4), 151a(5), 153 and 156. Representational disputes are not permitted, under the Act, to interrupt interstate commerce; a procedure for certification by the National Mediation Board of the representative of the employees is provided, and adherence to that procedure may be enforced by mandatory injunction, despite the provisions of the Norris-LaGuardia Act. Section 2 *Ninth*, 45 U.S.C. § 152 *Ninth; Virginian R. Co.* v. *System Federation, supra; Ruby* v. *American Airlines, Inc.*, 329 F.2d 11 (2d Cir. 1964), *vacated as moot*, 381 U.S. 277 (1965).—Thus, the Railway Labor Act provides procedures to cover the stated categories of controversy with which the Norris-LaGuardia Act is concerned; and where there are no procedures specified in the Railway Labor Act

to adjust a particular controversy, it should not be held that the controversy is one which the Norris-LaGuardia Act leaves to the unfettered, and disruptive, struggle of economic forces.

The purposes of the Act also support this construction. The Railway Labor Act is intended to provide procedures "for the prompt and orderly settlement of *all* disputes"[21]; it was so recognized, with respect to the railroads, when the Norris-LaGuardia Act was passed; it is in the light of this that the meaning of "involving or growing out of a labor dispute" in the Norris-LaGuardia Act must be construed. Where there is no "dispute" with respect to which the parties may invoke the conciliatory procedures of the Railway Labor Act, the case should not be held to be one "involving or growing out of a labor dispute" under the Norris-LaGuardia Act.[22] Otherwise, there would be the gap between the safeguarding procedures of the Railway Labor Act on the one hand and the Norris-LaGuardia Act's ban on injunctions on the other which Congress assumed would not exist when it passed the Norris-LaGuardia Act. (See pp. 26-27, *supra*.)—This harmonization of the concept of "dispute" under the two statutes has been the approach of several well-reasoned cases in the lower federal courts when presented with similar attempts to impede, through secondary picketing, the operations of rail or air transportation terminal facilities. *Chicago & I.M.R.Co.* v. *Brotherhood of Railroad Trainmen*, 315 F.2d 771, 775 (7th Cir. 1963), *vacated as moot*, 375 U.S. 18 (1963); *Lakefront*

---

[21] See text, p. 30, *supra* (emphasis supplied).

[22] This approach is, of course, consistent with the decision of this Court in *Manion* v. *Kansas City Terminal R. Co.*, 353 U.S. 927 (1957), where it was held that the Norris-LaGuardia Act barred an injunction where a "minor dispute" existed under the Railway Labor Act as long as the parties refrained from making use of the procedures set forth in the Act.

Dock & R.T.Co. v. *International Longshoremen's Ass'n*, 323 F.2d 549, 553 (6th Cir. 1962); *American Airlines, Inc.* v. *Air Line Pilots Ass'n*, 187 F. Supp. 643 (N.D. Ill. 1960). See *Brotherhood of Railroad Trainmen* v. *New York Cent. R. Co.*, 246 F.2d 114 (6th Cir. 1957), *cert. denied*, 355 U.S. 877 (1957).

Such a holding would be in the tradition of accommodation of the Railway Labor Act and the Norris-LaGuardia Act taught by cases such as *Brotherhood of Locomotive Engineers* v. *Louisville & N.R.Co., supra; Brotherhood of Railroad Trainmen* v. *Chicago River & I.R.Co., supra;* and *Brotherhood of Railroad Trainmen* v. *Howard, supra.* —Indeed, in the last-named case, this Court reached an analogous resolution of a problem created by a similarly asserted "gap" in the statutes. In holding the Norris-LaGuardia Act inapplicable, this Court said that the parties seeking injunctive relief "... must look to a judicial remedy to prevent the sacrifice or obliteration of their rights under the Act. For no adequate administrative remedy can be afforded by the National Railroad Adjustment or Mediation Board .... Our conclusion is that the District Court has jurisdiction and power to issue necessary injunctive orders notwithstanding the provisions of the Norris-LaGuardia Act." 343 U.S., at 774.

• • • • •

The Railway Labor Act expresses the public policy of Congress for the containment of disputes in the railway industry through the processes of representation certification, arbitration, conciliation, and mediation. The scheme established by Congress to contain the economic forces of the parties to a railway labor dispute would be set at naught if there were any room for the escalation of the economic warfare against carriers not involved in the dis-

pute, such as respondents attempted here. There are many terminals throughout the country in which operations are similar to those of the Jacksonville terminal. This Court has said, of a terminal facility like this one, that it "is a vital link in the national transportation system. Its continuous operation is important to the national flow of commerce." *California* v. *Taylor*, 353 U.S. 553, 566 (1957). Under the theory of the respondents, such a terminal can be shut down with impunity every time there is a lawful strike against one of the various carriers who happens to use it. Indeed, there is no reason to believe that the respondents' theory stops there, for they apparently espouse a theory—absolute immunity under the Norris-LaGuardia Act—which goes beyond actual use by the struck carrier of the particular terminal.

Thus, there is no reason to suppose that the Jacksonville terminal is the only one which, under respondents' theory, they could picket and close down because of their present controversy with the FEC. It is obvious that cars which originate on the FEC and which are interchanged at the Jacksonville terminal must be reinterchanged at other terminals throughout the country to reach destinations off the lines of the carriers who serve Jacksonville; and those cars must also be carried through various terminals throughout the country without interchange. If those FEC-originated cars were not handled through those other terminals, in Richmond or in Chicago or in Kansas City, there would doubtless be further pressure put on the FEC to come to terms with the respondents. Respondents have suggested no basis on which their legal theory stops short of entitling them to picket at any of those terminals—or, indeed, at any place along the line of any carrier interchanging with the FEC—and thus seeking to impose a

nationwide disruption of interstate rail service on the basis of their strike with one recalcitrant carrier."* This Court's cases teaching the necessity for accommodating the two statutes with which we are concerned compel the solution to the problem which we urge.

II. THE NORRIS-LAGUARDIA ACT, EVEN CONSIDERED WITHOUT REFERENCE TO THE RAILWAY LABOR ACT, DOES NOT PRECLUDE THE GRANT OF AN INJUNCTION HERE

While the Court need not reach the question if it should adopt the conclusion we have urged in part I as to the accommodation of the Railway Labor Act and the Norris-LaGuardia Act, there is a further reason why the Norris-

---

* Indeed, there has already been some out-of-state picketing by respondents in connection with this case, although it seems so far to be restricted to the picketing of innocent agencies of the federal government:

"FEC STRIKERS TO PICKET IN D.C.—
WHITE HOUSE AND CONGRESS

"Two busloads of railroad union members will carry their war with the Florida East Coast Railway to Washington tonight and will picket the White House and Congress. . . .

"C. J. Winter, Jacksonville strike chairman for the BRT, said, 'We are protesting the Supreme Court action putting off a ruling on picketing at the Jacksonville terminal. What it boils down to is we're starving while the Supreme Court is taking a vacation.'" *Jacksonville Journal*, Jacksonville, Florida, July 11, 1966, p. 1.

When the pickets reached Washington, it appears that they chose not the White House and Congress but a different target for their secondary picketing:

"Fifty trainmen, on strike against the Florida East Coast Railway since 1963, picketed the Justice Department yesterday because, they said, the courts have not acted quickly enough to resolve their dispute with the railroad. . . .

"The group plans to picket the Labor Department today. . . ." *The Washington Post*, July 14, 1966, p. A-27.

LaGuardia Act does not forbid the grant of an injunction here. That is because, analyzed solely in its own terms, the Norris-LaGuardia Act does not apply to conduct of the nature of the picketing involved here.

As the Court of Appeals pointed out (R. 45-46), there is no authoritative holding of this Court to the effect that the Norris-LaGuardia Act forbids the grant of an injunction against what the Court of Appeals characterized as an attempt to impose a secondary boycott, by which it meant the sort of conduct involved here.[1] At the present time, since the subject of what is prohibited and what is permissible secondary conduct in every context but that of a controversy solely within the railway and the airline industries has been taken in hand by the detailed provisions of the Labor-Management Relations Act and the administrative processes of the National Labor Relations Board thereunder, the effect of a holding on the point from this Court would not be of general import except on all-rail situations like the one at bar[2] (or similar situations in the airline industry).—On this undecided issue, we submit that the present case does not "involve or grow out of a labor

[1] The respondents cited three decisions of this Court to the Court of Appeals which they alleged amounted to such a holding. The Court of Appeals evidently concluded, and quite correctly so, that none of the three cases was such a case. See pp. 44-45, n. 4, *infra*.

We shall generally avoid using the term "secondary boycott" herein because it is used with varying meanings. Rather, we shall attempt to focus on the specifics of the respondents' conduct and their controversy with petitioners here.

[2] Presumably, the fact that for the last 19 years the subject has been covered, as far as industries other than the railroads and airlines are concerned, by the exclusive administrative remedies of the LMRA, which are exempt from the Norris-LaGuardia Act, accounts for the fact that there is no authoritative holding from this Court on the point.

dispute," and that accordingly the bar of Sections 4 and 7 of the Norris-LaGuardia Act is not applicable.

The determinative section is the definitional section, Section 13, and, most particularly, Section 13(c). 29 U.S.C. § 113(c). There, the term "labor dispute" is defined as including "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment," and it is made clear that a labor dispute can exist without the "disputants stand[ing] in the proximate relation of employer and employee"; but the requirement remains that a labor dispute be one between persons who are "disputants," whether or not they are employer and employee. *Cf. Columbia River Packers Ass'n* v. *Hinton*, 315 U.S. 143, 146-47 (1942).

Here, Coast Line, Seaboard and Terminal Company have no dispute with their employees; and they have no dispute "concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment" with the persons who are picketing them or with the brotherhoods which represent these FEC employees.

The only controversy that the brotherhoods and their pickets have with the Coast Line, the Seaboard and the Terminal Company is that they want them to embargo the FEC. This is not a controversy "concerning terms or conditions of employment."[3]—This controversy is thus clearly

[3] There are cases where the subject of the employer's business relationships with other businesses goes to the question of the terms and conditions of employment; most notably, where there is the question of contracting out the employer's work to non-

distinguishable from the controversy involved in this Court's decision in *Marine Cooks and Stewards* v. *Panama S.S. Co.*, 362 U.S. 365 (1960), where it was held that there could be no injunction granted against the picketing of a foreign nonunion vessel by domestic maritime unions who were concerned that the substandard wages paid on the vessel tended to deprive American maritime workers of their livelihoods. In that case, obviously there was a dispute between the picketed vessel and the unions as to the "terms or conditions of employment" on the vessel; the point of the picketing was that the wages and other remuneration were too low.[4] Here the picketing is not because of the wages or working conditions that prevail on the lines of the petitioners, but because they interchange cars with a struck carrier.

---

union shops, or to shops where substandard wages or conditions prevail. *Cf. Teamsters Union* v. *Oliver*, 358 U.S. 283, 294 (1959). But there is no such claim here; indeed, it is claimed that some of the FEC's work is being done by petitioners, not *vice versa*. Plainly, all that is desired from petitioners is that they cease doing business with FEC, not in an effort to improve the wages, hours or working conditions on petitioners' lines but in order to further the respondents' hand in their dispute at the FEC.

[4] Certain decisions of this Court before the passage of the LMRA, which were cited by respondents to the Court of Appeals as controlling (and apparently rejected by the Court of Appeals), are similarly clearly distinguishable. In *Lauf* v. *E. G. Shinner & Co.*, 303 U.S. 323 (1938), the picketing was clearly primary picketing, directed against an employer by a union which demanded to be recognized as the bargaining agent of the employer's employees; the dispute was thus one "concerning the association or representation of persons in negotiating . . . terms or conditions of employment." In *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552 (1938), there again was primary picketing of an employer on the grounds that he practiced racial discrimination in hiring. Clearly, this was a "labor dispute" which concerned "terms or conditions of employment"; that is, what employment practices should be followed by the employer. In *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91 (1940), while the Court of Appeals had found that a "secondary boycott" existed

Similarly, it cannot be said within the meaning of Sections 13(a) and 13(b) that this case is one between "persons participating or interested" in a "labor dispute," for Section 13(b) makes it clear that a person situated as are the Coast Line, the Seaboard, and the Terminal Company is to be held a person "participating or interested in a labor dispute" only "if relief is sought against him or it." But, for the reasons we have stated, the only "relief" that is sought against petitioners is that they cease doing business with the FEC; this is not relief of a labor grievance but of a commercial nature. *Cf. Bakery Sales Drivers Union* v. *Wagshal*, 333 U.S. 437 (1948).[8] As this Court has

---

and erroneously held that the Sherman Act, which was construed to make "secondary boycotts" unlawful, took precedence over the Norris-LaGuardia Act, this Court did not accept the finding of the Court of Appeals that there was a "secondary boycott," and indeed the facts did not indicate conduct similar to that at bar. The facts were that the union had picketed certain retail milk stores in an effort to unionize them and to make certain of their employees—who purported to be "independent contractors"—join the union. It was clear here that the dispute with the persons picketed was one "concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating . . . conditions of employment." Thus, in each of the three cases cited by respondents below, the labor conditions or representation practices of the person picketed were in controversy. Here there is no question as to the labor conditions or representation practices at Coast Line, Seaboard, or Terminal Company. The only controversy that they have with respondents is over the commercial question whether they should embargo the FEC in order to please and assist respondents.

Similarly, in *United States* v. *Hutcheson*, 312 U.S. 219 (1941), although the practice involved was mischaracterized by the dissent as a secondary boycott (*id.*, at 243), what was involved was picketing and a boycott of products directed immediately at an employer with whom there was a representation controversy, expressly covered by § 13(c) of the Act.

[8] It has been asserted by respondents that the *Wagshal* case is an indication that "secondary boycotts" were meant to be covered by the ban against injunctions contained in the Norris-LaGuardia Act. The passage that has been cited for this purpose appears at

made plain, it is not enough that there be a "person . . . participating or interested in a labor dispute"—as the brotherhoods obviously are in their dispute with the FEC—simply on one side of the case; for an injunction to be barred, "'persons' must be involved on both sides of the case, or the conflicting interests of 'persons' on both sides of the dispute." *United States* v. *United Mine Workers*, 330 U.S. 258, 275 (1947). This is not the case here.[6]—A

---

333 U.S., at 442. It is clear that all the Court was saying at this point was stating the argument of one of the parties that the law on "secondary boycotts" (undefined) had been changed, and giving the "short answer" that the Taft-Hartley Act did not alter the law as far as a private party seeking an injunction was concerned—whatever the law as to the enjoinability of a particular form of conduct might be. The conduct at bar in the *Wagshal* case, indeed, was found not to be within the definitions contained in the Norris-LaGuardia Act in the first place.

[6] Respondents have suggested that this case is one "involving or growing out of a labor dispute" within the meaning of § 13 of the Norris-LaGuardia Act on the theory that it involves and grows out of the strike between the FEC and its employees. (Brief in Opposition to Certiorari, pp. 16-17) It is argued that, since the case "involves persons who are engaged in the same industry," it is one "involving or growing out of" the FEC strike if the purpose of the parties doing the picketing is to assist in that strike. No case authority is cited for such an expansive reading of § 13(a). If that were all that was required for a case to "involve or grow out of" a labor dispute, respondents could engage in tertiary or quaternary picketing with impunity—that is, picketing carriers which connect with the Seaboard or the Coast Line, or, for that matter, carriers which connect with those carriers—without fear of a federal court injunction, so long as the ultimate purpose was to pressure the FEC.

The fact of the matter is, however, that § 13(a) is not a complete definition of the term "involving or growing out of"; while § 13(a) defines the sort of persons who may be involved on the different sides of a case which "involves or grows out of a labor dispute," or of a labor dispute itself, it never purports to define what the relationship between the parties engaged in the "labor dispute" and the plaintiffs and defendants in the lawsuit must be for the lawsuit to be one "involving or growing out of a labor dispute"—except for the subsection's references to the definition of "person participating or interested in a labor dispute" in § 13(b),

number of cases in the lower federal courts have held that, where the plaintiff seeking injunctive relief is not a party to a "labor dispute" in which the defendant may be involved, the case is not one "involving or growing out of a labor dispute" and the Norris-LaGuardia Act's ban on injunctions is not to be applied. See, *e.g., Pacific Gamble Robinson Co.* v. *Minneapolis & St. L. Ry. Co.*, 85 F. Supp. 65 (D. Minn. 1949), *appeal dismissed*, 181 F.2d 812 (8th Cir. 1950); *Erie R. Co.* v. *Local 1286*, 117 F. Supp. 157 (W.D. N.Y. 1953); *Louisville & N.R. Co.* v. *Local Union No. 432*, 104 F. Supp. 748, 750 (S.D. Ala. 1952); *Gomez* v. *United Office & Professional Workers*, 73 F. Supp. 679 (D.D.C. 1947); *cf. Baltimore & Ohio R. Co.* v. *Chicago R. & I.R. Co.*, 170 F.2d 654 (7th Cir. 1948), *cert. denied*, 336 U.S. 944 (1949); *Chicago & N.W. Ry. Co.* v. *Toledo, P. & W. R. Co.*, 217 F. Supp. 64 (S.D. Ill. 1963); *Illinois Cent. R. Co.* v. *International Brotherhood*, 90 F. Supp. 640 (W.D. La. 1950). This approach, we submit, is the correct one.

Considerations of the Act's purpose support this view. The purpose of the Norris-LaGuardia Act, declared as the "public policy of the United States" to be applied "in the interpretation of this act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this act," is to assure "the individual unorganized worker" "full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment"; and to assure

---

which we discuss in the text at pp. 45-46 above. Respondents apparently admit (see Brief in Opposition to Certiorari, p. 17) that they must demonstrate that the petitioners are "persons participating or interested in a labor dispute"; but they are obviously unable to demonstrate the existence of the requirement of § 13(b) that "relief [be] sought against" petitioners in connection with the "labor dispute." —In point of fact, the only redress of grievances sought against petitioners is of a commercial nature, that they embargo the FEC.

that that worker "be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ." Section 2, 29 U.S.C. § 102. As this expression of purpose, and as the other relevant authorities make plain, the Norris-La Guardia Act was designed as a shield for unions against strikebreaking through judicial intervention on behalf of their adversaries. It was not designed as an aggressive weapon enabling unions to drag strangers into their controversies in order to bring enhanced pressure on those with whom they may have a dispute.

Petitioners are not attempting to break respondents' strike against the FEC and are not asking the federal courts to curtail respondents' legitimate rights to picket the FEC. The injunction is carefully limited in scope and permits respondents to picket the gate at the terminal facility used by FEC employees; they are also free to picket anywhere up and down the FEC's line throughout the length of Florida. Petitioners merely seek to be left alone by respondents, with whom they have no dispute, and who seek no redress of any grievance concerning "terms and conditions of employment" or "concerning the association or representation of persons" from petitioners.

As the dissenting judge below pointed out, the essential purpose of the Norris-LaGuardia Act was to reverse the holdings which had grown up under Sections 6 and 20 of the Clayton Act, to the effect that the anti-injunction provisions of Section 20 applied only in the employment relationship, thereby excluding from its protections labor unions themselves, which were not employees (*Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443 (1921)), and

excluding from its protections strikers, who were held no longer to be "employees." *Dail-Overland Co.* v. *Willys-Overland, Inc.*, 263 Fed. 171, 188 (N.D. Ohio 1920). The legislative history does not evidence any desire by Congress to make immune from injunction the imposition of economic force on strangers to a dispute.

It would be paradoxical at this late date, nineteen years after Congress has set the face of national labor policy against secondary conduct such as this through passage of the LMRA, for this Court to hold for the first time that in the areas not in terms covered by the LMRA's provisions for administrative relief, the federal courts are powerless to prevent such conduct.[7] While harmonizing the Railway Labor Act's "dispute" concept with the definition of "labor dispute" under the Norris-LaGuardia Act would make decision on the contentions we have made in this part II unnecessary, we submit that if the Court does not agree with us on point I that it should not hold, at this late date, the

---

[7] Of course, a holding that the Norris-LaGuardia Act does not insulate conduct of the sort here at bar from injunction will not permit private parties to seek injunctions against similar or assertedly similar conduct in the field of non-rail and non-airline industries covered by the LMRA. The LMRA contains provisions for administrative remedies against certain specified conduct of a secondary nature (see § 8(b)(4)), and affords an injunctive remedy purely at the suit of the NLRB to obtain preliminary relief against such practices. Section 10(j), 29 U.S.C. § 160(j). See *Local No. 438* v. *Curry*, 371 U.S. 542, 546-47 (1963). Conduct not proscribed by § 8(b)(4) would obviously be either protected conduct under § 7 of the Act, which is not subject to injunction from any court, federal or state, by reason of the supremacy of § 7, or conduct which is "arguably protected" where the regulatory regime of the Board must function in the first instance. That regulatory regime, within the scope where it operates, certainly would preclude a federal court injunction at the suit of a private party as much as a state court injunction. *Cf. Pan American World Airways, Inc.* v. *United States*, 371 U.S. 296 (1963); *Keogh* v. *Chicago & N.W. R. Co.*, 260 U.S. 156 (1922).

Norris-LaGuardia Act of itself makes the federal courts powerless to act against secondary conduct of the sort involved here.

III. THE COMPLAINT IN THIS MATTER STATED A CLAIM ARISING UNDER FEDERAL LAW AND THE PROOFS JUSTIFIED THE GRANT OF THE LIMITED PRELIMINARY INJUNCTION

While the sole ground of the Court of Appeals' decision was that the Norris-LaGuardia Act had withdrawn any jurisdiction in the federal courts to grant the injunctive relief which had been afforded by the District Court, the respondents also tendered to the Court of Appeals the issue whether the preliminary injunction was properly granted on its merits, apart from the Norris-LaGuardia Act point. The scope of review of a district court's grant of a preliminary injunction on appeal is limited, inasmuch as the grant of such an injunction, once jurisdiction is shown, lies within the sound discretion of the district court, not to be disturbed except for abuse of that discretion. See *United States* v. *Corrick*, 298 U.S. 435 (1936); *Mayo* v. *Lakeland Highlands Canning Co.*, 309 U.S. 310 (1940). Nonetheless, we will brief the merits of the District Court's issuance of the limited preliminary injunction so that this Court, if it is so advised, may dispose of all the issues arising from the appeal taken by respondents from that injunction. To a great extent, of course, the same considerations, drawn from the Railway Labor Act, which teach that the Norris-LaGuardia Act and the Railway Labor Act must be accommodated here, also indicate the illegality of the picketing under federal law.

1. The complaint stated a claim under the Interstate Commerce Act and the Railway Labor Act; and the juris-

diction of the District Court was properly invoked under 28 U.S.C. §§ 1331 and 1337. The Interstate Commerce Act, as this Court recently recognized in *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co., supra,* 384 U.S., at 244-45, imposes a federally created duty upon petitioners to furnish transportation service to the public. (Section 1(4), 49 U.S.C. § 1(4)) That Act also imposes upon them a federally created duty to provide interchange services with other carriers. (Sections 1(4) and 3(4), 49 U.S.C. §§ 1(4), 3(4)) It has been repeatedly held by this Court and the lower federal courts that there is jurisdiction in the federal courts over suits to remove obstructions to the performance of that duty. *Ex parte Lennon,* 166 U.S. 548 (1897); *Brotherhood of Railroad Trainmen* v. *New York Central R. Co., supra,* 246 F.2d, at 121; *Chicago & I.M.R.Co.* v. *Brotherhood of Railroad Trainmen, supra,* 315 F.2d, at 774.—Likewise, it has been repeatedly held that there is jurisdiction in the federal courts to consider claims of violations of the purposes and policies of the Railway Labor Act. See *Tunstall* v. *Brotherhood of Locomotive Firemen,* 323 U.S. 210 (1944); *Graham* v. *Brotherhood of Locomotive Firemen,* 338 U.S. 232 (1949); *Brotherhood of Railroad Trainmen* v. *Howard,* 343 U.S. 768 (1952); *Brotherhood of Locomotive Engineers* v. *Louisville & N.R.Co.,* 373 U.S. 33 (1963). As we have demonstrated in part I, this case involves such violations.

2. As revealed by the facts of record, the picketing was unlawful as a matter of federal law on three separate bases, any one of which would be sufficient to justify the injunction to prevent the irreparable harm to the petitioners and to the public threatened by it. The picketing was unlawful because (a) it violated the purposes and policies of the Railway Labor Act while disrupting the performance of

the petitioners' public duties under the Interstate Commerce Act; (b) it is conduct which impeded petitioners in the performance of their duties without justification, since it was contrary to the national labor policy which Congress has expressed in the Labor Management Relations Act ("LMRA"); and (c) its objectives are unlawful in that it seeks to require the petitioners to impose an unlawful embargo upon the FEC. Each of these bases of illegality, which entitle the petitioners and the public to an appropriate form of injunctive relief, is founded on a federal statute; each by itself amply justifies the District Court's limited injunction.

A. As we have demonstrated in part I above, the means used by respondents—picketing the innocent carriers—violated the purposes and policies of the Railway Labor Act to confine and canalize the economic forces in the hands of labor and management in the railroad industry and to restrict the ultimate remedy of self-help to a limited number of situations, regulated by the Act. Since a purpose of the Railway Labor Act is to prevent interruptions of rail commerce, and since nothing in the Act contemplates the use of self-help directly against persons subject to the Act who are not parties to a dispute, the conduct involved here was an unlawful exercise of self-help under the Railway Labor Act, and accordingly was an unlawful means, under federal law, of the respondents' pursuing their controversy with the FEC. Since the picketing involved an obstruction of the duties of the petitioners under the Interstate Commerce Act[1] in contravention of the policies of the Railway Labor Act, it was properly enjoinable.

[1] For the statutory provisions, see p. 60, *infra*. Indeed, the obstruction went far beyond the obstruction of interchange activities with the FEC, and shut down the entire transportation operations of petitioners into, out of and through the Jacksonville terminal. "The Interstate Commerce Act . . . places a responsibility on

B. Moreover, the actions of respondents, detrimental to the public and to the petitioners' public duties, were without legal justification in that they were of a nature violative of Congress' national labor policy as set forth in the LMRA. The pertinent provisions of the LMRA have the purpose of "shielding unoffending employers and others from pressures in controversies not their own." *NLRB* v. *Denver Bldg. & Construction Trades Council*, 341 U.S. 675, 692 (1951).

To be sure, the LMRA does not in terms apply to a controversy of this sort, which is entirely within the railroad industry.[2] But that does not mean that the policy of that

---

common carriers by rail to provide transportation. The duty runs not to shippers alone but to the public." *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co., supra*, 384 U.S., at 244-45.

[2] Employers subject to the Railway Labor Act are excluded from the definition of "employer" under the LMRA, and their employees are excluded from the definition of "employee" thereunder. §§ 2(2) and 2(3), 29 U.S.C. §§ 152(2), (3). "Labor organizations" are subject to the LMRA only if "employees" as so defined participate in them. See § 2(5), 29 U.S.C. § 152(5). This Court has declared: "It is clear that neither railroads nor their employees may carry their grievances with one another to the N.L.R.B. for resolution. . . . We think it clear that Congress, in excluding 'any person subject to the Railway Labor Act' from the statutory definition of 'employer,' carved out of the Labor Management Relations Act the railroads' employer-employee relationships which were, and are, governed by the Railway Labor Act." *Local Union No. 25* v. *New York N.H.&H.R. Co.*, 350 U.S. 155, 159-60 (1956). The 1959 amendments to § 8(b)(4) of the Act extended that provision to make it apply where railroads were the victims of secondary conduct, but only by a non-rail union. § 704, Pub. L. 86-257, 73 Stat. 542. See *United Steelworkers* v. *NLRB*, 376 U.S. 492 (1964). Suffice it to say that if this matter is within the jurisdiction of the NLRB, it would be hard to imagine a railway labor matter that was not. See the discussion in the Brief in Opposition in *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Company*, No. 244, O.T. 1966, pp. 13-18.

The present respondents, as petitioners in that case, are contending that while, as they insist, they are not subject to the

Act can be ignored by a federal court in evaluating the legality of respondents' conduct. The outlawry of certain sorts of secondary activities in the LMRA was a deliberate and much-debated response by Congress to limit certain excesses which had been encountered under the National Labor Relations Act. It scarcely could be argued that Congress did not extend these prohibitions to the railroad industry because it thought that secondary boycotts in the transportation field were a salutary thing. To make that assumption would be to assume that Congress, while forbidding the disruptive effects of a secondary boycott on innocent parties in industry generally, was willing to tolerate them in the transportation industries where their effects would generally be the more disastrous.[3] But only if such an assumption can be made are the standards set forth by Congress under the LMRA irrelevant to a

---

LMRA (Petition, No. 244, p. 16), the question is "an arguable one" (although no one seems willing to argue it) and accordingly there should be no state court jurisdiction to enjoin their activities—even as they are contending here that there is no federal court jurisdiction—and, in the light of their position that they are not subject to the LMRA, no federal agency jurisdiction—to enjoin their conduct.

[3] Indeed, Congress amended the relevant provision of the LMRA in 1959 to make it clear that there could be relief granted against unlawful secondary picketing directed against railroads by non-rail employees. § 704, Pub. L. 86-257, 73 Stat. 542. Since this sort of picketing generally involves a tie-up simply of access to a shipper's plant or group of plants, its effect generally is considerably less adverse than secondary picketing by rail employees such as was involved here. See *United Steelworkers* v. *NLRB*, 376 U.S. 492, 500-01 (1964). There is nothing in the legislative history of the 1959 amendment which indicates that Congress had any desire affirmatively to sanction secondary picketing by the employees of one rail carrier against another, and to ascribe such an intent to Congress by implication appears highly paradoxical. Indeed, the clear thrust of the Congressional discussions was that the purpose of the amendment was to "close loopholes" under which the secondary boycott might be available. See 105 Cong. Rec. 6666-67; 15,532; 17,898 (1959). As Congressman Griffin, one of the authors

federal court faced with the problem of determining the legality of conduct such as that of respondents.

Section 8(b)(4) of the National Labor Relations Act, as amended by the LMRA, in pertinent part makes it unlawful for a labor organization:

> "(i) to engage in, or to induce or encourage any individual employed by any person . . . to engage in, a strike or a refusal in the course of his employment . . . to perform any services; or (ii) to threaten, coerce, or restrain any person . . . where in either case an object thereof is— . . . .
>
> "(B) Forcing or requiring any person . . . to cease doing business with any other person . . . *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing."

The picketing here was obviously an attempt—and a successful one—both to encourage the employees of Coast Line, Seaboard, and Terminal Company to refuse to perform services, and to restrain the operations of Seaboard, Coast Line and Terminal Company; and its purpose was manifestly to force and require Seaboard, Coast Line and Terminal Company "to cease doing business with . . . [another] person," the FEC. Further, under the decisions of this Court, the picketing was not primary picketing of a sort which is saved by the proviso. See *Electrical Workers* v. *NLRB,* 366 U.S. 667 (1961); *United Steelworkers* v. *NLRB,* 376 U.S. 492 (1964). Obviously, the picketing was

---

of the 1959 Act, said: "That it was the clear and unequivocal intention of Congress in 1947 to outlaw the evils of secondary boycotts can be illustrated . . . from the legislative history"; and the 1959 amendment was intended in furtherance of that policy. 105 Cong. Rec. 15,531 (1959).

not at the premises of the FEC. *Cf. Electrical Workers* v. *NLRB, supra.* Nor is this a case where the picketing was restricted to a place, not on the primary employer's premises, which was in effect a continuation of his premises, and where "the picketing employees made no attempt to interfere with any of the [connecting] railroad's operations for" persons other than the FEC. *Cf. United Steelworkers* v. *NLRB, supra,* 376 U.S., at 499. Here the entire premises of the Terminal Company, at which activities that involve the FEC in any fashion play only a minor part, were picketed; the pickets carried the message "Do Not Cross"; there was no "attempt to minimize the effect of [the] picketing . . . on the operations of the neutral employers utilizing" the terminal;[4] and the picketing had its intended effect: all activities and movements within the terminal, not simply those for the account of the FEC, were brought to a halt.[5]

---

[4] *Electrical Workers* v. *NLRB, supra,* 366 U.S., at 678.

[5] At the most, the terminal site is what is called a "common situs," in the language of the cases under the LMRA. Indeed, in view of the fact that the operations of the struck employer at the situs here are minimal, it is an unusual sort of "common situs." The NLRB has evolved and the courts have approved rules to govern situations where a union has a dispute with an employer whose work is carried on at a place where other neutral employees are also at work. When such picketing is involved, the Board has been particularly careful to be certain that the picketing is "conducted so as 'to minimize its impact on neutral employees. . . .'" *Building Trades Council,* 60 L.R.R.M. 1296, 1298 (NLRB, Oct. 25, 1965), *appeal pending,* 5th Cir. In *District Council of Painters,* 60 L.R.R.M. 1075 (NLRB, Sept. 7, 1965), *enforcement ordered,* 361 F.2d 70 (D.C. Cir. 1966), for example, the Board held it an unfair labor practice for a union to picket the main gate of a common construction site when a special gate had been set aside for the employees of the struck employer. The Board has stated that the *Electrical Workers* and *Steelworkers* cases, dealing with picketing on or adjacent to the primary employer's premises, did not affect the rule for common situs picketing. *Building Trades Council, supra,* 60 L.R.R.M., at 1297-99. The fact that work is done by the primary employer at the common situs is

Even where the picketing is at a site primarily occupied by the struck employer, as was not the case here, the cases hold that picketing at a gate used by employees of a neutral employer is permissible only where the neutral employers who were picketed "were connected with the normal operations of the [primary] employer . . . ." *United Steelworkers* v. *NLRB, supra,* 376 U.S., at 497. But here the picketing took place all around the periphery of the terminal, at all the lines bringing Seaboard and Coast Line trains into the terminal, where the Seaboard and Coast Line employees who enter in no case perform any work whatsoever for the FEC, and where, in some cases, none of them are likely to participate in interchanges with the FEC.[6] (See pp. 5-7 and notes; p. 10 n. 14, *supra.*)

While FEC employees work on the terminal premises, they have their own gate, and the injunction was carefully limited so as to permit the primary picketing that could be carried on there. (R. 20, 30) The picketing at the other gates represents the clearest kind of proscribed secondary activity. It can hardly be characterized as "an unavoidable by-product of the legitimate primary picketing." *Building Trades Council,* 60 L.R.R.M. 1296, 1299 (NLRB, Oct. 25, 1965), *appeal pending,* 5th Cir.

Similarly, the repeated assertion by respondents that the activities going on inside the terminal are "struck

---

o justification for picketing the gate through which the neutral mployees enter. See *Building Trades Council,* 60 L.R.R.M. 1296 NLRB, Oct. 25, 1965), *appeal pending,* 5th Cir.; *Millwrights ocal No. 1102,* 60 L.R.R.M. 1509 (NLRB, Dec. 6, 1965).

[6] As we develop below, the Seaboard and Coast Line employees' ork performing interchanges of cars with the FEC does not mount to doing work for the FEC; it is work done for their own nployer in picking up or delivering cars. FEC employees do their nployer's work in picking up from, or delivering cars to, the her carriers.

work," that is, work which would normally be performed by the primary employer, the picketing of which might be considered primary, has no support in the record.[7] It does not appear that any of the work at the terminal is part of the primary operation of the FEC other than the FEC's interchange moves, which are, of course, handled by the FEC's own crews (see p. 5, n. 6, *supra*); and picketing them at their own gate, or their own separate yard, is not affected by the injunction. The throwing of switches by Terminal Company employees for the FEC moves clearly, on the record, was the same as that characteristically performed by the Terminal Company as an "independent contractor" for all carriers using the terminal. (R. 64-65, 109, 110) The moves by Coast Line and Seaboard switching crews within the terminal or their cars destined for interchange with the FEC are no more an extension of the FEC's work than the production of raw materials by a supplier for sale to a struck manufacturer. The work done on the daily FEC passenger train by the Terminal Company Mechanical Department was work characteristically done by an independent contractor—the Mechanical Department did the same for the Coast Line's and the Seaboard's vastly more extensive passenger operations (R. 113, 133)—and in any event the work done for the FEC is clearly *de minimis*.[8] And, of course, the bulk of the moves through the terminal, passenger and freight, switching moves as well as the extensive main-line traffic through the terminal handled by Coast Line

[7] The LMRA cases recognize an "ally" doctrine, under which the picketing of other employers doing work normally performed by the struck primary employer is permitted as primary picketing. See, *e.g.*, *NLRB* v. *Business Machine Local 459*, 228 F.2d 553 (2d Cir. 1955), *cert. denied*, 351 U.S. 962 (1956).

[8] See p. 7, n. 9, *supra*. The remoteness of the FEC yards from the terminal—located as they are twelve miles down the far side of the St. Johns River—and the necessity for the FEC passenger trains to enter a downtown terminus, would have been a reason for the

and Seaboard road crews, had nothing at all to do with the FEC. (See pp. 4-7 and notes, *supra*) Yet all of these activities were stopped by the picketing. To call this "an unavoidable by-product of the legitimate primary picketing" is to make a very small—and severable—tail wag a very large dog.

It is plain, then, that the picketing, apart from that at the reserved gate, was entirely the sort of secondary activity against which Congress set a national public policy in the LMRA. We submit that in judging the legality of respondents' actions, a federal court may, and should, take that general statutory policy into account. It would be myopic to construe one of the two great federal statutes substantively regulating labor relations without regard to the other. *Cf. Southern Steamship Co.* v. *NLRB,* 316 U.S. 31, 47 (1942); see *Universal Camera Corp.* v. *NLRB,* 340 U.S. 474, 487 (1951); *NLRB* v. *John W. Campbell, Inc.,* 159 F.2d 184, 186 (5th Cir. 1947). Certainly the statutory analogy is relevant in assessing the factors which must be weighed with the manifest public and private harm caused by respondents' actions in determining whether those actions are legally justified.

C. Finally, the picketing in question here is unlawful because it seeks to have the petitioners commit acts in violation of their statutory duties. The declared purpose of the picketing is to make the Seaboard, the Coast Line and the Terminal Company cease interchanging cars with the FEC. But this would be a violation of their duties under the Interstate Commerce Act, redressable by civil

---

erformance of this work by an independent contractor in any vent, even apart from the practice of the other carriers. See p. n. 9, *supra.*

suits for damages[9] and mandatory injunctions[10] and by criminal pains and penalties.[11]

Section 1(4) of the Interstate Commerce Act provides that: "It shall be the duty of every common carrier subject to this act to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers. . . . " 49 U.S.C. § 1(4). And Section 3(4) of the Act requires that: "All carriers subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines. . . . " Numerous through routes have been established by the Coast Line and Seaboard with the FEC, of long standing and antedating the FEC's strikes, requiring interchange of cars at the Jacksonville Terminal.

The duty to effect the interchanges on those through routes—"the primary duty to receive and transport cars of a connecting carrier"—may be enforced by mandatory injunction at the suit of a connecting carrier or of a shipper using the through routes. *Peoria & Pekin U.R. Co.* v. *United States,* 263 U.S. 528, 535 (1924). No case holds that this duty of a common carrier ceases simply because a connecting carrier is subject to a strike, as long as that connecting carrier continues to be able to tender and receive cars at the interchange point; indeed, the decided cases teach that a strike furnishes no excuse to the

---

[9] Section 8, Interstate Commerce Act, 49 U.S.C. § 8.

[10] *Peoria & Pekin U.R. Co.* v. *United States,* 263 U.S. 528, 535 (1924).

[11] Section 10(1), Interstate Commerce Act, 49 U.S.C. § 10(1).

performance of that duty.[12] Neither does any case suggest that the imposition of economic pressure upon a common carrier, such as that which the picketing here was designed to do, excuses it in terminating interchange service and interrupting established through routes.—Moreover, the FEC has obtained a mandatory injunction against petitioners, requiring them to continue to make the interchanges. This order was obtained in a contested proceeding brought by FEC against the Terminal Company, Seaboard, Coast Line and the other carriers using the terminal in 1963 shortly after the nonoperating employees' strike began at FEC, presumably in anticipation by FEC of some action like the present picketing. *Florida East Coast R. Co.* v. *Jacksonville Terminal Co.*, No. 63-16-Civ.-J., M.D. Fla. (R. 198, 207, 258-64, 265-68, 245-54)[13]

---

[12] See *Chicago, B.&Q.R. Co.* v. *Burlington C.R.&N.R. Co.*, 34 Fed. 481 (C.C.S.D. Iowa 1888); *Toledo, A.A.&N.M.R. Co.* v. *Pennsylvania Co.*, 54 Fed. 730, 746 (C.C.N.D. Ohio 1893), *appeal dismissed*, 150 U.S. 393 (1893). Compare *Montgomery Ward & Co.* v. *Consolidated Freightways, Inc.*, 42 I.C.C. 225 (1943), where the Commission simply held that the refusal of a motor carrier's employees to cross a picket line "physically prevented" the carrier from furnishing service. There is no counterpart to §§ 1(4) and 3(4) in the case of motor carriers. Here the picketing prevented the petitioners from using the terminal facility at all; there is no particular "physical reason," other than the wishes of the unions, which dictates the desired permanent interruption of service to the FEC. Other cases reach a contrary conclusion to *Consolidated Freightways* on similar facts. See *Montgomery Ward & Co.* v. *Northern Pacific Terminal Co.*, 128 F. Supp. 475 (D.Ore. 1953); *Merchandise Warehouse Co.* v. *A.B.C. Freight Forwarding Corp.*, 165 F. Supp. 57 (S.D.Ind. 1958); *Quaker State Motor Parts Co.* v. *Interstate Motor Freight System*, 148 F. Supp. 226 (E.D. Pa. 1957).

[13] It was only after a preliminary injunction was granted that a compromise of the action, dismissing a claim for damages while continuing the injunction, was reached. (R. 269-73)

The respondents have suggested[14] that the situation is one in which an embargo may lawfully be imposed upon the FEC.[15] No case supports the proposition that the existence of a strike on a connecting carrier is a valid reason for the declaration of an embargo. The provisions of Section 1(15) of the Interstate Commerce Act, which refer to the sort of conditions which surround the declaration of an embargo, make reference to the factors of "shortage of equipment, congestion of traffic, or other emergency requiring immediate action." The case law is to the effect that an embargo may be declared when there is "traffic congestion or other physical or operation conditions [making] . . . it impossible for the carrier to provide transportation to a particular area." *New York Cent. R. Co.* v. *United States,* 201 F. Supp. 958, 959 (S.D.N.Y. 1962), *vacated as moot,* 371 U.S. 805 (1962). The FEC's strike is not such a reason; the FEC is physically able to tender the cars it wishes to have interchanged and to receive the

---

[14] See the "Memorandum of Respondents in Opposition to Petitioners' Application for an Order Staying Proceedings, *etc.*," pp. 18-21, filed in this Court.

[15] Embargoes are levied by the carriers, as a matter of practice. Respondents have suggested that the ICC itself has power to declare embargoes, based on the provisions of § 1(15) of the Interstate Commerce Act, which reads in pertinent part: "Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is given, authority . . . to give directions for preference or priority in transportation, embargoes, or movement of traffic under permits, at such time and for such periods as it may determine, and to modify, change, suspend, or annul them." Petitioners contend that this only gives the Commission power to regulate priorities in an embargo once one has otherwise been declared. Of course, the Commission has power to annul embargoes imposed by the carriers. *New York Central R. Co.* v. *United States,* 201 F. Supp. 958, 959 (S.D.N.Y. 1962), *vacated as moot,* 371 U.S. 805 (1962). In any event, the substantive principles as to when an embargo may lawfully be declared remain the same.

cars that are delivered to it for interchange to destinations on its line. Indeed, no authority supports the proposition that an embargo may be declared against one carrier and not against all carriers at a particular point.[16]

Respondents have suggested that the physical congestion that occurred in the Jacksonville terminal when the picketing commenced is the sort of physical, operating emergency that would justify the declaration of an embargo.[17] It is a strange argument to say that picketing is lawful when it seeks to induce the imposition of an embargo when the only thing which is alleged to justify the imposition of the embargo is the picketing itself. The argument is manifestly unsound; it is not the interchange which is causing the operating crisis but the picketing. And if an embargo were declared, the picketing would cease; the physical and operating crisis would be at an end; what then would be the justification for the continuation of the embargo?

Finally, the suggestion that an embargo may be declared either because of a strike on a connecting carrier or because of picketing which seeks to have such an embargo imposed, is an argument that assumes that the statutory policy of the United States is in favor of the escalation of railway labor disputes, not their containment. Its ac-

---

[16] The ICC has assigned its powers under § 1(15) to the Association of American Railroads under § 1(17) of the Act. The regulations of the Association of American Railroads adopted pursuant to the assignment of functions to it under § 1(17) provide that "embargoes are prohibited . . . to control the routing of traffic to or via any particular gateway or road." Circular CAD-87, Third Revision, Car Service Division, Association of American Railroads. Thus, the pertinent regulations support the proposition that an embargo may not be declared against "a particular road" in these circumstances.

[17] See "Memorandum of Respondents in Opposition to Petitioners' Application for an Order Staying Proceedings, *etc.*," p. 18, filed in this Court.

ceptance would mean that a strike on one carrier would automatically escalate into an incident of regional or national proportions. It would tend to destroy the ability of the struck carrier to use self-help to run the struck railroad the best it can, which, as this Court made clear in *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co., supra,* 384 U.S., at 244-45, remains a struck carrier's duty. It would be strange to say that the struck carrier was duty bound to keep up operations the best it could, but that its connecting carriers on the other hand were at liberty to suspend their normal duty to interchange with it. The existence of such an authority in connecting carriers to embargo a struck carrier would have profound and disturbing implications for the nation's railway labor policies. Its effect would be to make more ruinous and more absolute the weapons of self-help which the Railway Labor Act contemplates the parties to a railway labor dispute will have only as the ultimate weapon.

• • • • •

Thus, the picketing here was in violation of the purposes and policies of the Railway Labor Act; it was picketing of a sort which contravenes the national labor policy set forth by Congress; and it was picketing which sought to compel the petitioners to violate the duties imposed upon them by federal law. For each and all of these reasons, the picketing was, on the merits, properly enjoined by the District Court.

CONCLUSION

For the reasons stated, the judgment of the Court of Appeals should be reversed, and the order of the District Court granting the limited preliminary injunction should be affirmed.

Respectfully submitted,

PAUL A. PORTER
ABE KRASH
DENNIS G. LYONS
DANIEL A. REZNECK
1229 Nineteenth Street, N. W.
Washington, D. C. 20036

Attorneys for Petitioners

Of Counsel:

PRIME F. OSBORN, III
C. D. TOWERS, JR.
DAVID M. FOSTER
W. E. GRISSETT, JR.
ADAM G. ADAMS, II
ROGERS, TOWERS, BAILEY, JONES & GAY
COX, GRISSETT & WEBB
MCCARTHY, ADAMS & FOOTE
Jacksonville, Florida

CHARLES R. HALPERN
ARNOLD & PORTER
Washington, D. C.

August, 1966

APPENDIX

APPENDIX

Statutory Provisions

1. The Railway Labor Act.

The text of the Railway Labor Act, 44 Stat. 577 (1926), as amended, 45 U.S.C. §§ 151 *et seq.*, is as follows:

"DEFINITIONS

"SECTION 1. When used in this Act and for the purposes of this Act—

"First. The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier': *Provided, however,* That the term 'carrier' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether

any line operated by electric power falls within the terms of this proviso. The term 'carrier' shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

"Second. The term 'Adjustment Board' means the National Railroad Adjustment Board created by this Act.

"Third. The term 'Mediation Board' means the National Mediation Board created by this Act.

"Fourth. The term 'commerce' means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

"Fifth. The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define

the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

"The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

"Sixth. The term 'representative' means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

"Seventh. The term 'district court' includes the United States District Court for the District of Columbia; and the term 'court of appeals' includes the United States Court of Appeals of the District of Columbia.

"This Act may be cited as the 'Railway Labor Act'.

"GENERAL PURPOSES

"SEC. 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settle-

ment of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"GENERAL DUTIES

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own

choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided,* That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

"Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided,* (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further,* That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

"Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

"Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, re-

gardless of any other express or implied agreements between them.

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

"Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third,

fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any United States attorney to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided,* That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

"Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided,* That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided,* That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

"(c) The requirement of membership in a labor organization in an agreement made pursuant to sub-

par graph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however,* That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further,* That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

"(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended.

"NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES—
INTERPRETATION OF AGREEMENTS

'SEC. 3. First. There is hereby established a Board, to
known as the 'National Railroad Adjustment Board', the
mbers of which shall be selected within thirty days after
proval of this Act, and it is hereby provided—

'(a) That the said Adjustment Board shall consist of
rty-six members, eighteen of whom shall be selected by
carriers and eighteen by such labor organizations of the
ployees, national in scope, as have been or may be organ-
d in accordance with the provisions of section 2 of this
t.

'(b) The carriers, acting each through its board of direc-
s or its receiver or receivers, trustee or trustees or
ough an officer or officers designated for that purpose by
h board, trustee or trustees or receiver or receivers,
ll prescribe the rules under which its representatives
ll be selected and shall select the representatives of the
riers on the Adjustment Board and designate the divi-
n on which each such representative shall serve, but no
rier or system of carriers shall have more than one
resentative on any division of the Board.

(c) The national labor organizations, as defined in
agraph (a) of this section, acting each through the chief
cutive or other medium designated by the organization
ssociation thereof, shall prescribe the rules under which
labor members of the Adjustment Board shall be se-
d and shall select such members and designate the
sion on which each member shall serve; but no labor
nization shall have more than one representative on
division of the Board.

"(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

"(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

"(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in

ecordance with section 2 hereof and is otherwise properly ualified to participate in the selection of the labor mem-ers of the Adjustment Board, and the findings of such oards of three shall be final and binding.

"(g) Each member of the Adjustment Board shall be ompensated by the party or parties he is to represent. ach third or neutral party selected under the provisions f (f) of this section shall receive from the Mediation Board uch compensation as the Mediation Board may fix, to-ether with his necessary traveling expenses and expenses tually incurred for subsistence, or per diem allowance in eu thereof, subject to the provisions of law applicable ereto, while serving as such third or neutral party.

"(h) The said Adjustment Board shall be composed of our divisions, whose proceedings shall be independent of ne another, and the said divisions as well as the number of eir members shall be as follows:

"First division: To have jurisdiction over disputes in-olving train- and yard-service employees of carriers; that engineers, firemen, hostlers, and outside hostler helpers, nductors, trainmen, and yard-service employees. This vision shall consist of ten members, five of whom shall be lected and designated by the carriers and five of whom all be selected and designated by the national labor organ-ations of the employees.

"Second division: To have jurisdiction over disputes in-lving machinists, boilermakers, blacksmiths, sheet-metal rkers, electrical workers, car men, the helpers and ap-ntices of all the foregoing, coach cleaners, power-house ployees, and railroad-shop laborers. This division shall sist of ten members, five of whom shall be selected by

the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(*l*) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the contro-

versy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless

they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

"(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

"(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

"(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

"(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

"(u) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respec-

tive divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however,* That the chairmanship and vice-chairmanship of any division shall alternate as betwen the groups, so that both the chairmanship and vice-chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

"(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

"(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members

of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (1) hereof, with respect to a division of the Adjustment Board.

"Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

"NATIONAL MEDIATION BOARD

"SEC. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the aproval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same man-

ner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the 'National Mediation Board', to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. Each member of the Mediation Board in office on January 1, 1965, shall be deemed to have been appointed for a term of office which shall expire on July 1 of the year his term would have otherwise expired. The terms of office of the members first appointed shall begin as soon as the members shall qualify, but not before thirty days after the approval of this Act, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of $15,000 per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

"All cases referred to the Board of Mediation and unsettled on the date of the approval of this Act shall be handled to conclusion by the Mediation Board.

"A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

"Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

"Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with the Classification Act of 1949, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board,

Regional Adjustment Boards established under paragraph (w) of section 3, and boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

"Fourth. The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, and [*sic*] such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

"Fifth. All officers and employees of the Board of Mediation (except the members thereof, whose offices are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or com-

pensation to conform to the duties to which such officers and employees may be assigned.

"All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

"FUNCTIONS OF MEDIATION BOARD

"SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

"(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

"(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

"The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify

both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

"Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

"Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

"(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

"If an arbitrator named by the Mediation Board, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly, to select another arbitrator, in the same manner as provided in this Act for an original appointment by the Mediation Board.

"(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

"(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

"(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall there-

upon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

"(e) Within sixty days after the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or

ates of pay, rules, and working conditions have been made effective.

"(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession.

"PROCEDURE IN CHANGING RATES OF PAY, RULES, AND WORKING CONDITIONS

"SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by

the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

"ARBITRATION

"SEC. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

"Second. Such board of arbitration shall be chosen in the following manner:

"(a) In the case of a board of three the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

"(b) In the case of a board of six the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a

majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

"Third. (a) When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Board of Mediation; and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this Act, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

"(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

"(c) Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

"Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

"(d) No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

"(e) Each member of any board of arbitration created under the provisions of this Act named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

"(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided*,

however, That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

"(g) A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

"Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

"(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpoenas. In the event of the failure of any person to comply with any such subpoena, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may

invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as provided for in the Act to regulate commerce approved February 4, 1887, and the amendments thereto.

"Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

"SEC. 8. The agreement to arbitrate—

"(a) Shall be in writing;

"(b) Shall stipulate that the arbitration is had under the provisions of this Act;

"(c) Shall state whether the board of arbitration is to consist of three or of six members;

"(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or court of appeals of the United States, or before a member of the Board of Mediation, and, when so acknowledged, shall be filed in the office of the Board of Mediation;

"(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

"(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitra-

tion may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

"(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

"(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

"(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided,* That the parties may agree at any time upon an extension of this period;

"(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

"(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

"(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

"(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

"(n) Shall provide that the respective parties to the award will each faithfully execute the same.

"The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however,* That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this Act, delivered to such board of arbitration.

"SEC. 9. First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

"Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which

the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

"Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

"(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act;

"(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

"(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however,* That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: *Provided further,* That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

"Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however,* That, if the parties

shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

"Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

"Sixth. The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

"Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

"Eighth. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

"EMERGENCY BOARD

"SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

"There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

"After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

"GENERAL PROVISIONS

"SEC. 11. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

"SEC. 12. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this Act."

2. **The Norris-LaGuardia Act.**

The text of the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C. §§ 101 *et seq.*, is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

"SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of owner-

ip association, the individual unorganized worker is com-
nly helpless to exercise actual liberty of contract and
protect his freedom of labor, and thereby to obtain ac-
otable terms and conditions of employment, wherefore,
ough he should be free to decline to associate with his
lows, it is necessary that he have full freedom of asso-
tion, self-organization, and designation of representa-
es of his own choosing, to negotiate the terms and con-
ions of his employment, and that he shall be free from
interference, restraint, or coercion of employers of
or, or their agents, in the designation of such repre-
ntatives or in self-organization or in other concerted ac-
ities for the purpose of collective bargaining or other
tual aid or protection; therefore, the following defini-
ns of, and limitations upon, the jurisdiction and authority
the courts of the United States are hereby enacted.

'SEC. 3. Any undertaking or promise, such as is de-
ibed in this section, or any other undertaking or promise
conflict with the public policy declared in section 2 of
s Act, is hereby declared to be contrary to the public
licy of the United States, shall not be enforceable in any
rt of the United States and shall not afford any basis
the granting of legal or equitable relief by any such
rt, including specifically the following:

'Every undertaking or promise hereafter made, whether
tten or oral, express or implied, constituting or con-
ed in any contract or agreement of hiring or employ-
nt between any individual, firm, company, association, or
poration, and any employee or prospective employee
he same, whereby

(a) Either party to such contract or agreement under-
s or promises not to join, become, or remain a member

of any labor organization or of any employer organization; or

"(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

"SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising,

peaking, patrolling, or by any other method not involving raud or violence;

"(f) Assembling peaceably to act or to organize to act promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing ithout fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described section 3 of this Act.

"SEC. 5. No court of the United States shall have jurisction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons articipating or interested in a labor dispute constitute or re engaged in an unlawful combination or conspiracy beause of the doing in concert of the acts enumerated in ection 4 of this Act.

"SEC. 6. No officer or member of any association or organization, and no association or organization participating interested in a labor dispute, shall be held responsible or iable in any court of the United States for the unlawful ts of individual officers, members, or agents, except upon ear proof of actual participation in, or actual authorizaon of, such acts, or of ratification of such acts after actual owledge thereof.

"SEC. 7. No court of the United States shall have jurisction to issue a temporary or permanent injunction in y case involving or growing out of a labor dispute, as

herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That substantial and irreparable injury to complainant's property will follow;

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

"Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a com-

inant shall also allege that, unless a temporary restrain-
order shall be issued without notice, a substantial and
eparable injury to complainant's property will be un-
oidable, such a temporary restraining order may be is-
ed upon testimony under oath, sufficient, if sustained, to
tify the court in issuing a temporary injunction upon
earing after notice. Such a temporary restraining order
all be effective for no longer than five days and shall be-
me void at the expiration of said five days. No temporary
training order or temporary injunction shall be issued
cept on condition that complainant shall first file an
dertaking with adequate security in an amount to be
ed by the court sufficient to recompense those enjoined
any loss, expense, or damage caused by the improvident
erroneous issuance of such order or injunction, including
reasonable costs (together with a reasonable attorney's
) and expense of defense against the order or against
granting of any injunctive relief sought in the same
oceeding and subsequently denied by the court.

'The undertaking herein mentioned shall be understood
signify an agreement entered into by the complainant
d the surety upon which a decree may be rendered in the
me suit or proceeding against said complainant and
rety, upon a hearing to assess damages of which hearing
mplainant and surety shall have reasonable notice, the
d complainant and surety submitting themselves to the
risdiction of the court for that purpose. But nothing
rein contained shall deprive any party having a claim or
ise of action under or upon such undertaking from elect-
to pursue his ordinary remedy by suit at law or in
uity.

SEC. 8. No restraining order or injunctive relief shall
granted to any complainant who has failed to comply

with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

"SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

"SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the court of appeals for its review. Upon the filing of such record in the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character."

[Sections 11 & 12 have been repealed, c. 645, § 21, 62 Stat. 862 (1948)]

"SEC. 13. When used in this Act, and for the purposes of this Act—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether

or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

"SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

"SEC. 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed."

3. **LMRA § 8(b)(4).**

Section 8(b)(4) of the National Labor Relations Act, as added by the Labor Management Relations Act, 61 Stat. 140 (1947), as amended, 29 U.S.C. § 158(b)(4), is as follows:

"SEC. 8

* * * * *

"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

"(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to

threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

"(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

"(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

"(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certifi-

cation of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act: *Provided further,* That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;"

4. **Pertinent Provisions of the Interstate Commerce Act.**

Sections 1(4), 1(11), 1(15), 3(4), and 3(5) of the Interstate Commerce Act, 24 Stat. 379 (1887), as amended, 49 U.S.C. §§ 1(4), 1(11), 1(15), 3(4), and 3(5), are as follows:

"SEC. 1(4) It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reason-

able through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this part to establish reasonable through routes with common carriers by water subject to part III, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers."

* * * * *

"SEC. 1(11) It shall be the duty of every carrier by railroad subject to this part to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful."

* * * * *

"SEC. 1(15) Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Com-

mission may determine: (a) to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the Commission; (b) to make such just and reasonable directions with respect to car service without regard to the ownership as between carriers of locomotives, cars, and other vehicles, during such emergency as in its opinion will best promote the service in the interest of the public and the commerce of the people, upon such terms of compensation as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable; (c) to require such joint or common use of terminals, including main-line track or tracks for a reasonable distance outside of such terminals, as in its opinion will best meet the emergency and serve the public interest, and upon such terms as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable; and (d) to give directions for preference or priority in transportation, embargoes, or movement of traffic under permits, at such time and for such periods as it may determine, and to modify, change, suspend, or annul them. In time of war or threatened war the President may certify to the Commission that it is essential to the national defense and security that certain traffic shall have preference or priority in transportation, and the Commission shall, under the power herein conferred, direct that such preference or priority be afforded."

* * * * *

"SEC. 3(4) All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange

of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III.

"SEC. 3(5) If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a common carrier by railroad owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power by order to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any common carrier by railroad, by another such carrier or other such carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other

carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the esult of compliance with such requirement, or just compensation for such use, or both, as the case may be."

FILED
SEP 26 196
JOHN F. DAVIS, CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 220

ATLANTIC COAST LINE RAILROAD COMPANY, JACKSONVILLE TERMINAL COMPANY, and SEABOARD AIR LINE RAILROAD COMPANY, *Petitioners,*

v.

BROTHERHOOD OF RAILROAD TRAINMEN, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOWELL KENNEDY, T. C. BOLAND, and J. E. EASON, *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENTS

Of Counsel:
SCHOENE & KRAMER
Washington, D. C.

RUTLEDGE & MILLEDGE
Miami, Florida

BECKHAM & MCALILEY
Miami, Florida

LESTER P. SCHOENE
1625 K Street, N.W.
Washington, D. C.

NEAL RUTLEDGE
ALLAN MILLEDGE
RICHARD L. HORN
601 Flagler Federal Bldg.
111 N.E. First Street
Miami, Florida 33132

THOMAS W. MCALILEY
1010 Concord Building
63 West Flagler Street
Miami, Florida 33130

Attorneys for Respondents

September, 1966.

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
OPINIONS BELOW	1
STATUTES INVOLVED	1
STATEMENT OF THE CASE	4
Introduction	4
Background of FEC Strikes	9
FEC-Jacksonville Terminal Operations	11
The Picketing	19
The Reserved Gate	23
SUMMARY OF ARGUMENT	24
ARGUMENT	27
I. The Norris-LaGuardia Act, by Its Own Terms, by Long Standing Interpretation of This Court, and Read Either in Connection with or Apart from the Railway Labor Act, Precludes Federal Court Jurisdiction To Enter the Labor Injunction Here Involved	27
II. Petitioners' Suggested "Accommodation" of the Norris-LaGuardia Act to the Railway Labor Act Is Without Foundation in the Language or Spirit of Either Statute	47
III. The District Court Lacked Jurisdiction Because the Conduct Enjoined Is Arguably Subject to the Exclusive Primary Jurisdiction of the National Labor Relations Board	57
IV. Respondents' Conduct Herein Is Outlawed by No Federal Statute and Is Expressly Legalized by Section 20 of the Clayton Act	62
A. Clayton Act Applicable to Respondents' Activity	62
B. Respondents' Activity Not Prohibited Even Under NLRB Standards	63

Page

C. Respondents' Activity Not Violative of Interstate Commerce Act 68

CONCLUSION 71

CITATIONS

CASES:

Amalgamated Assn. of Street, Electric Ry. & Motor Coach Employees v. Dixie Motor Coach Corp., 170 F. 2d 902 (8 Cir., 1948) 44, 51

Amalgamated Clothing Workers v. Richman Brothers, 348 U.S. 511 (1955) 59

American Federation of Labor v. Swing, 312 U.S. 321 (1941) 56

American Steel Foundries v. Tri-City Central Trades, 257 U.S. 184 (1921) 36

Bakery Sales Drivers' Union v. Wagshal, 333 U.S. 437 (1948) 40

Bedford Cut Stone Company v. Journeyman Stone Cutters' Ass'n. of North America, 274 U.S. 37 (1927) 36

Brotherhood of Locomotive Engineers v. Baltimore & Ohio R. Co., 372 U.S. 284 (1963) 25, 30, 48, 49

Brotherhood of Locomotive Engineers v. Louisville & N.R. Co., 373 U.S. 33 (1963) 49

Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Railroad Trainmen and Phelps Dodge Corp., 130 NLRB No. 94, 47 LRRM 1461 (1961) 60

Brotherhood of Locomotive Firemen & Enginemen v. Florida East Coast Railway Company, 346 F. 2d 673 (5 Cir., 1965) 7, 10, 31, 44, 50

Brotherhood of R.R. Trainmen v. Chicago R. and I.R. Co., 353 U.S. 30 (1957) 25, 47, 49

Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768 (1952) 26, 48

Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., No. 244, O.T. 1966 ..... 26, 57

Brotherhood of Railroad Trainmen v. New York Central R. Co., 246 F. 2d 114 (6 Cir., 1957), *cert. denied*, 355 U.S. 877 (1957) 51

Page

Brotherhood of Railroad Trainmen v. Toledo, P. and W.R. Co., 321 U.S. 50 (1944) 25, 50, 55
Brotherhood of Railway Clerks v. Florida East Coast Ry. Co., 384 U.S. 238 (1966) 10
California v. Taylor, 353 U.S. 553 (1957) 49
Capital Service, Inc. v. NLRB, 347 U.S. 501 (1954) .. 59
Chicago & I.M.R. Co. v. Brotherhood of Railroad Trainmen, 315 F. 2d 771 (7 Cir., 1963), vacated as moot, 375 U.S. 18 (1963) 50
Columbia River Packers Assn. v. Hinton, 315 U.S. 143 (1941) 43
Douds v. Metropolitan Federation of Architects, 75 F. Supp. 672 (D.C., S.D., N.Y. 1948) 67
Duplex Printing Press Co. v. Deering, 254 U.S. 443 (1921) 25, 35, 70
Eastern Air Lines, Inc. v. Flight Engineers Internat'l Ass'n, 340 F. 2d 104 (5 Cir., 1965) 51
East Texas Fr. L. v. International Brotherhood, 163 F. 2d 10 (5 Cir., 1947) 45, 51
Electrical Workers v. NLRB, 366 U.S. 667 (1961) ...31, 62
Elgin, J. & E. R. Co. v. Burley, 325 U.S. 711 (1945) .. 51
Florida East Coast Ry. Co. v. Brotherhood of Locomotive Engineers, Order of Railway Conductors and Brakemen, and Brotherhood of Locomotive Firemen and Enginemen, 362 F. 2d 482 (5 Cir., 1966) 10
Florida East Coast Ry. Co. v. Brotherhood of R. Trainmen, 336 F. 2d 172 (5 Cir., 1964), *cert. denied*, 379 U.S. 990 (1965) 10, 30
Florida East Coast Railway Company v. Jacksonville Terminal Company et al., Case No. 63-16, U.S.D.C., Middle District, Jacksonville Division, Florida ...7, 17
Garner v. Teamsters Union, 346 U.S. 485 (1953) 58
Graham v. Brotherhood of Locomotive Firemen, 338 U.S. 232 (1949) 48
Gunther v. San Diego and Arizona E. Ry., 382 U.S. 257 (1965) 49
Hanna Mining Co. v. Marine Eng. Ben. Ass'n., 86 S. Ct. 327 (1965), — U.S. — 26, 58
International Brotherhood of Electrical Workers, AFL-CIO v. NLRB, 350 F. 2d 791 (D.C. Cir., 1965), *cert. denied*, March 21, 1966, 16 L. Ed. 206, 86 S. Ct. 1196 60

Page

International Union, U.A.W. v. Wisconsin Employment Relations Board, 336 U.S. 245 (1949) 41
Jacksonville Terminal Company v. Florida East Coast Ry. Co., (5 Cir., July 7, 1966), — F. 2d — (No. 22931) 14
Lakefront Dock S.R.T. Co. v. International Longshoremen's Ass'n, 333 F. 2d 549 (6 Cir., 1962) 50
Lauf v. E. G. Shinner & Co., 303 U.S. 323 (1938) ... 33, 37
Lee Way Motor Freight v. Keystone Freight Lines, Inc., 126 F. 2d 931 (10 Cir., 1942), *cert. denied*, 317 U.S. 645 ..... 45, 51
Local Union No. 25 v. New York, New Haven and H.R. Co., 350 U.S. 155 (1956) 61
Loewe v. Lawlor, 208 U.S. 274 (1908) 34
Marine Cooks and Stewards v. Panama Steamship Co., 362 U.S. 365 (1960) 33, 41
Marine Eng. Ben. Ass'n v. Interlake Steamship Co., 370 U.S. 173 (1962) 26, 58, 61
Masters, Mates & Pilots and Ingram Barge Co., 136 N.L.R.B. No. 112, 49 L.R.R.M. 1943 (1962) 67
Meat Cutters Union v. Jewel Tea Co., 381 U.S. 676 (1965) 36
Milk Wagon Drivers' Union v. Lake Valley Farm Products, 311 U.S. 91 (1940) 37
Montgomery Ward & Co. v. Consolidated Freightways, 42 I.C.C. 225 (1943) 46, 68, 69
Montgomery Ward & Co. v. Northern Pacific Term. Co., 128 F. Supp. 475 (D. Ore. 1953), supplemental decision, 128 F. Supp. 520 69
New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552 (1938) 33, 37
NLRB v. Denver Bldg. & Construction Trades Council, 341 U.S. 675 (1951) 39
N.L.R.B. v. Electrical Workers, CIO 228 F. 2d 553 (2 Cir., 1955), *cert. denied*, 351 U.S. 962 (1956) 67
N.L.R.B. v. Ins. Agents Int. Union, 361 U.S. 477 (1960) 49, 54
N.L.R.B. v. International Rice Mill Co., 341 U.S. 665 (1951) 64
N.L.R.B. v. Local 459, Electrical Workers, 289 F. 2d 62 (2 Cir., 1961) 67
N.L.R.B. v. Peter Cailler Kohler Swiss Chocolates Co., 130 F. 2d 503 (2 Cir., 1942) 41

Page

Order of Railroad Telegraphers v. Chicago and N.W. R. Co., 362 U.S. 330 (1960) 25, 30, 33, 46, 50, 52, 55
Order of Railway Conductors and Brakemen v. Louisville & Nashville Railroad Company, 331 F. 2d 368 (5 Cir., 1964) 30
Pan American World Airways, Inc. v. United Bro. of Carpenters & Joiners, 324 F. 2d 217 (9 Cir., 1963) 60
San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959) 26, 58
Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962) 26, 49, 52, 53
Southeastern Motor Lines v. Hoover Truck Co., 34 F. Supp. 390 (M.D. Tenn. 1940) 46
Truax v. Corrigan, 257 U.S. 312 (1921) 36
United States v. American Trucking Ass'ns, 310 U.S. 534 (1940) 68
United States v. Building & Construction Trades Council of New Orleans, 313 U.S. 539 (1941) 39
United States v. Florida East Coast Ry. Co., 221 F. Supp. 325 (D.C.D.C. 1963) 10
United States v. Florida East Coast Ry. Co., 55 LRRM 2798 (M.D. Fla., 1964) 10
United States v. Florida East Coast Ry. Co., 348 F. 2d 682 (5 Cir., 1965) 10
United States v. Hutcheson, 312 U.S. 219 (1941) 25, 27, 34, 37, 41, 62
United States v. International Hod Carriers' and Common Laborers' District Council of Chicago, 313 U.S. 539 (1941) 38
United States v. United Brotherhood of Carpenters and Joiners of America, 313 U.S. 539 (1941) ... 38
United Steelworkers v. NLRB, 376 U.S. 492 (1964) 31, 61, 66
Virginian R. Co. v. System Federation, 300 U.S. 515 (1937) 26, 48

STATUTES:

Clayton Act, 38 Stat. 730, 15 U.S.C. 12 *et seq.*: .....*passim*

§ 6, 15 U.S.C. 17 .....1-2, 34, 62, 68
§ 20, 29 U.S.C. 52 .....2-3, 34, 35, 36, 38, 62, 68

Page

Interstate Commerce Act 27, 52, 68, 69, 70

Part II, 49 U.S.C. §§ 301-327 45

National Labor Relations Act, as amended, Labor Management Relations Act of 1947, 61 Stat. 136, 29 U.S.C. 151 *et seq.:* 65, 66, 67, 68

§ 2, 29 U.S.C. 152 .....3, 59
§ 8(b)(4), 29 U.S.C. 158(b)(4) 27, 39, 47, 58, 59, 62
§ 10, 29 U.S.C. 180 .....39, 40, 58-59

Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. 101 *et seq.:* .....*passim*

§ 4, 29 U.S.C. 104 .....27, 28, 53
§ 13, 29 U.S.C. 113 .....27, 28-29, 31, 42, 43, 46-47, 56

Railway Labor Act, 44 Stat. 577, as amended, 45 U.S.C. 151 *et seq:* .....*passim*

§ 2, 45 U.S.C. 152 48
§ 5, 45 U.S.C. 155 54
§ 10, 45 U.S.C. 160 54-55

Sherman Act, 26 Stat. 209, 15 U.S.C. 1 *et seq.* 34

CONGRESSIONAL MATERIAL:

48 Cong. Rec. 6421 (1914) 34

48 Cong. Rec. 6438 (1914) 34

75 Cong. Rec. 4618-4620 (1932) 55

75 Cong. Rec. 5503-5505 (1932) 55

93 Cong Rec. 4198 (1947) 40

95 Cong. Rec. 8709 (1949) 68

OTHER:

Frankfurter and Greene, The Labor Injunction (1930) 36

Holmes, "Privilege, Malice, and Intent" (1894), 8 Harv. L. Rev. 1 9

Norris, Fighting Liberal (1945) 40

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 220

TLANTIC COAST LINE RAILROAD COMPANY, JACKSONVILLE TERMINAL COMPANY, and SEABOARD AIR LINE RAILROAD COMPANY, *Petitioners,*

v.

ROTHERHOOD OF RAILROAD TRAINMEN, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOWELL KENNEDY, T. C. BOLAND, and J. E. EASON, *Respondents.*

n Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENTS

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth ircuit has now been officially reported at 362 F. 2d 9.

STATUTES INVOLVED

In addition to the statutory provisions set forth in e Appendix to petitioners' brief, respondents beve this case involves the following additional statuy provisions:

1. *Section 6 of The Clayton Act,* 38 Stat. 731, 15 U.S.C. 17:

"Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing in

the antitrust laws shall be construed to forbid t existence and operation of labor, agricultural, horticultural organizations, instituted for the pu poses of mutual help, and not having capital sto or conducted for profit, or to forbid or restrain i dividual members of such organizations from la fully carrying out the legitimate objects thereo nor shall such organizations, or the membe thereof, be held or construed to be illegal combin tions or conspiracies in restraint of trade, und the antitrust laws."

2. *Section 20 of the Clayton Act,* 38 Stat. 73 29 U.S.C. 52:

"Sec. 20. That no restraining order or injun tion shall be granted by any court of the Unite States, or a judge or the judges thereof, in a case between an employer and employees, or b tween persons employed and persons seeking e ployment, involving or growing out of, a dispu concerning terms or conditions of employment, u less necessary to prevent irreparable injury property, or to a property right, of the par making the application, for which injury there no adequate remedy at law, and such property property right must be described with partic larity in the application, which must be in writi and sworn to by the applicant or by his agent attorney.

"And no such restraining order or injuncti shall prohibit any person or persons, whetb singly or in concert, from terminating any relati of employment, or from ceasing to perform a work or labor, or from recommending, advisi or persuading others by peaceful means so to d or from attending at any place where any su person or persons may lawfully be, for the purpo of peacefully obtaining or communicating inf mation, or from peacefully persuading any pers to work or to abstain from working; or from ce

ing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

3. *Section 2 (2) - (5) of The Labor Management Relations Act, 1947*, 49 Stat. 450, 61 Stat. 137, 29 U.S.C. 152 (2) - (5):

"(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to be benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural

laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

"(4) The term 'representatives' includes any individual or labor organization.

"(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

Respondents also submit that the First Amendment to the United States Constitution is here involved:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

STATEMENT OF THE CASE

Introduction

This is another case arising out of the Florida East Coast Railway Company's[1] long-standing labor difficulties going back to January, 1963. It is safe to say that these labor difficulties constitute not only the longest railroad strike in this nation's history, but that

[1] Hereinafter sometimes referred to as FEC.

they have also spawned more expensive and time-consuming litigation than any other single railroad's labor problems.

Since cases are not and should not be decided in a vacuum, the spate of *reported* companion cases arising out of the various FEC strikes are set forth below for the information of the Court.[2] There are at least an

---

[2] In chronological order the reported cases arising out of the FEC strike are as follows:

5/ 7/63 *United States* v. *Florida East Coast Ry. Co.* (D.C.D.C. 1963), 221 F. Supp. 325, 53 LRRM 2942.

9/13/63 *Broward County Port Authority* v. *Order of R. R. Telegraphers* (Fla. Cir. Ct. 1963), 54 LRRM 2228.

11/13/63 *Broward County Port Authority and Order of Railroad Telegraphers* (1963), 144 NLRB No. 115, 54 LRRM 1312.

3/ 2/64 *United States* v. *Florida East Coast Ry. Co.* (M.D. Fla. 1964), 55 LRRM 2798.

3/ 2/64 *United States* v. *Florida East Coast Ry. Co.* (M.D. Fla. 1964), 55 LRRM 2802.

3/ 2/64 *Brotherhood of R. Trainmen* v. *Florida East Coast Ry. Co.* (M.D. Fla. 1964), 55 LRRM 2560.

8/18/64 *Florida East Coast Ry. Co.* v. *Brotherhood of R. Trainmen* (5 Cir., 1964), 336 F. 2d 172, 56 LRRM 3009, cert. den., 379 U.S. 990, 58 LRRM 2256.

10/30/64 *United States* v. *Florida East Coast Ry. Co.* (M.D. Fla. 1964), 57 LRRM 2618.

11/ 5/64 *Brotherhood of Locomotive Engineers* v. *Florida East Coast Ry. Co.* (M.D. Fla. 1964), 57 LRRM 2641.

11/25/64 *Florida East Coast Ry. Co.* v. *Brotherhood of R. Trainmen* (5 Cir., 1965), 341 F. 2d 299.

12/ 4/64 *Brotherhood of Locomotive Engineers* v. *Florida East Coast Ry. Co.* (M.D. Fla. 1964), 58 LRRM 2283.

1/26/65 *Florida East Coast Ry. Co.* v. *Brotherhood of Loc. Eng.* (5 Cir., 1965), 341 F. 2d 99.

1/26/65 *Florida East Coast Ry. Co.* v. *United States* (5 Cir., 1965), 340 F. 2d 319.

6/ 8/65 *Brotherhood of Locomotive Firemen & Enginemen* v. *Florida East Coast Ry. Co.* (5 Cir., 1965), 346 F. 2d 673, 59 LRRM 2476.

(Footnote continued on page 6)

equal multitude of *unreported* cases in state and federal courts and administrative agencies, many of which are still pending.

7/14/65 *Florida East Coast Ry. Co.* v. *Mason* (Fla. S. Ct., 1965), 177 So. 2d 217.

7/16/65 *International Brotherhood of Electrical Workers* v. *NLRB* (D.C. Cir., 1965), 350 F. 2d 791, cert. den., — U.S. —, 86 S. Ct. 1196.

7/21/65 *United States* v. *Florida East Coast Ry. Co.* (5 Cir., 1965), 348 F. 2d 682, 59 LRRM 854.

9/30/65 *Brotherhood of Locomotive Engineers* v. *Florida East Coast Ry. Co.* (M.D. Fla. 1965), 60 LRRM 2292.

5/23/66 *Brotherhood of Ry. & S.S. Clerks* v. *Florida East Coast Ry. Co.* (1966), 384 U.S. 238, 86 S. Ct. 1920, affirming *United States* v. *Florida East Coast Ry. Co.* (5 Cir., 1965), 348 F. 2d 682.

6/14/66 *Florida East Coast Ry. Co.* v. *Brotherhood of Locomotive Engineers* (5 Cir., 1966), 362 F. 2d 482.

6/15/66 *Brotherhood of Railroad Trainmen* v. *Atlantic Coast Line RR. Co.* (5 Cir., 1966), 362 F. 2d 649.

6/ 6/66 Order reinstating injunction on conditions, ... U.S. ...., 86 S. Ct. 1856.

6/20/66 Certiorari granted, ... U.S. ...., 86 S. Ct. 1925.

Cases collaterally involving the strike are:

3/ 4/64 *Florida East Coast Ry. Co.* v. *Jacksonville Terminal Co.* (5 Cir., 1964), 328 F. 2d 720, cert. den., 379 U.S. 830 (1964).

11/22/64 *I.C.C.* v. *Florida East Coast Ry. Co.* (1965), ... U.S. ...., 86 S. Ct. 277.

7/ 7/66 *Jacksonville Terminal Co.* v. *Florida East Coast Ry.* (5 Cir., July 7, 1966), ... F. 2d .... (No. 22931).

Among the multitude of unreported cases in state and federal courts and administrative agencies, many of which are still pending, is:

1/30/63 *Florida East Coast Ry. Co.* v. *Jacksonville Terminal Company, Atlantic Coast Line RR. Co., Seaboard Air Line RR. Co., Southern Ry. Co., and Georgia Southern and Florida Ry. Co.*, Case No. 63-16, M.D. Fla., wherein the injunction that appears in the Record, R. 145-154, was entered.

Respondents sincerely believe that both the stubborn duration of FEC's labor disputes and the prolific litigation resulting are, at least in large part, a direct result of federal labor injunctions which have effectively granted the Florida East Coast Railway "safe harbor" at both its northern and southern termini to interchange traffic with connecting carriers immune from the effects of peaceful, primary picketing by the striking unions against such interchange.[2] These injunctions, entered at the outset of a strike, have virtually stripped the various striking unions of their only peaceful, and we say lawful, economic weapons for self-help. In each case, the federal labor injunction effectively restrained orderly, peaceful, non-violent conduct aimed directly at FEC's regular, day-to-day operations and carried on (without trespassing) in publicly-owned areas located as close as possible to the physical place where the FEC operations were regularly being carried on.

This case involves the latest of such federal labor injunctions. Respondents propose to demonstrate in this brief that the effect of this injunction is to alter

[2] The injunction involved at the southern end of the FEC's system, compelling the connecting carrier's employees to disregard the striking unions' picket line posted at the place where interchange occurred, was entered in June, 1963, and was reversed some two years later in *Brotherhood of Locomotive Firemen & Enginemen* v. *Florida East Coast Railway Company* (5 Cir., 1965), 346 F. 2d 673. A similar injunction to the one there involved was entered at FEC's northern end on January 30, 1963, in a case to which the unions were not parties, and could not become parties (R. 284), entitled *Florida East Coast Railway Company* v. *Jacksonville Terminal Company et al.*, Case No. 63-16, U.S. District Court, Middle District, Jacksonville Division, Florida. The record in that case was introduced as Defendants' Exhibit A in this case, and excerpts therefrom appear in the Record, pp. 194-285; the injunction itself appears at R. 245-254.

drastically the balance of economic power legislated by Congress in this vital transportation industry, contrary to the letter and the spirit of the Norris-La Guardia Act, 29 U.S.C. 101 et seq., and the Clayton Act, 38 Stat. 730, 15 U.S.C. 17, 29 U.S.C. 52, and to the scheme of the Railway Labor Act, 45 U.S.C. 151 et seq. With all deference, respondents submit that the District Court's judicial action here involved represents a return to an earlier day when the federal courts regularly became actively involved in terminating labor controversies affecting interstate commerce—almost invariably in favor of the "property" right of management to continue operations free from the concerted effects of peaceful labor activity deliberately designed to interfere with such operations.

As early as 1894 Justice Holmes, writing on the subject of the tort of intentional infliction of damage by one upon another, recognized that the judicial resolution of such cases necessarily and particularly involved questions of policy of a legislative nature, saying:

> "Perhaps one of the reasons why judges do not like to discuss questions of policy, or to put a decision in terms upon their views as lawmakers, is that the moment you leave the path of merely logical deduction you lose the illusion of certainty which makes legal reasoning seem like mathematics. But the certainty is only an illusion, nevertheless. Views of policy are taught by experience of the interests of life. Those interests are fields of battle. Whatever decisions are made must be against the wishes and opinion of one party, and the distinctions on which they go will be distinctions of degree. * * *
>
> "* * *
>
> "* * * The ground of decision really comes down to a proposition of policy of rather a delicate

nature concerning the merit of the particular benefit to themselves intended by the defendants, and suggests a doubt whether judges with different economic sympathies might not decide such a case differently when brought face to face with the issue.

"* * *

"* * * I make these suggestions, not as criticisms of the decisions, but to call attention to the very serious legislative considerations which have to be weighed. The danger is that such considerations should have their weight in an inarticulate form as unconscious prejudice or half conscious inclination. * * *" Holmes, "Privilege, Malice, and Intent" (1894), 8 Harv. L. Rev. 1, 7-9.

Respondents' basic position is that Congress has weighed the serious legislative considerations here involved and has resolved them in the Clayton Act and again in the Norris-LaGuardia Act, contrary to then-prevailing judicial solutions and contrary to the judicial solution here proposed by petitioners.

Background of FEC Strikes

In January, 1963, eleven non-operating[4] crafts went on strike against the Florida East Coast Railway over

[4] In 1893 Eugene V. Debs's American Railway Union was formed under his leadership to unite all railroad workers in one organization. Since the collapse of that Union following termination of the Pullman strike of 1894 by federal injunction and federal troops sent to Chicago by President Cleveland (in spite of the protest of Governor Altgeld), railroad employees have traditionally been organized along craft lines. "Non-operating" crafts refer to trades such as shopmen, clerks, telegraphers, maintenance of way and signal employees, etc., that are not actually engaged in running trains; "operating" crafts refer to trades such as trainmen, engineers, conductors, etc., that actually do run trains. The Railway Labor Act itself recognizes this prevailing pattern of organization, e.g., Section 3, First (h), 45 U.S.C. 153, First (h).

a wage dispute. The Railway ceased operations. Shortly thereafter it resumed operations on a limited but gradually increasing scale. By the end of 1963 it had achieved substantially pre-strike levels of operation as to car-load freight service, although it had not resumed either passenger or less-than-car-load freight service.

This resumption of operations was made possible by two controlling factors:

1. FEC's wholesale disregard of the provisions of the Railway Labor Act concerning the maintenance of existing contract rates of pay, rules, and working conditions. See, e.g., *United States* v. *Florida East Coast Ry. Co.* (D.C.D.C. 1963), 221 F. Supp. 325; *United States* v. *Florida East Coast Ry. Co.* (MD. Fla. 1964), 55 LRRM 2798; *Florida East Coast Ry. Co.* v. *Brotherhood of R. Trainmen* (5 Cir. 1964), 336 F. 2d 172, cert. den., 379 U.S. 990; *United States* v. *Florida East Coast Ry. Co.* (5 Cir. 1965), 348 F. 2d 682, affirmed *sub nom., Brotherhood of Railway Clerks* v. *Florida East Coast Ry. Co.*, 384 U.S. 238 (1966); *Florida East Coast Ry. Co.* v. *Brotherhood of Locomotive Engineers, Order of Railway Conductors and Brakemen, and Brotherhood of Locomotive Firemen and Enginemen* (5 Cir. 1966), 362 F. 2d 482.

2. FEC's success in obtaining two federal labor injunctions compelling its connecting carriers *and their employees* to interchange cars with it and to render essential labor services to it. See, e.g., Defendants' Exhibit A (R. 245-254, 159); *Brotherhood of Locomotive Firemen and Enginemen* v. *Florida East Coast Ry. Co.* (5 Cir. 1965), 346 F. 2d 673.

By late 1964, when the FEC was finally required through court action to restore contract working condi-

tions, many of the operating craft members who were not on strike, but who had been honoring the non-operating unions' picket lines, went back to work. The FEC, however, continued to process its so-called Section 6 (45 U.S.C. 156) proposals to abolish all existing contracts with the operating crafts and substitute therefor its "Uniform Working Agreement" which radically altered seniority rights, wages, craft lines, hours, etc., in ways deemed highly detrimental by the unions. On April 24, 1966, having exhausted the procedures of the Railway Labor Act, the FEC declined the National Mediation Board's proffer of arbitration (R. 141-143) and unilaterally implemented its proposed "Uniform Working Agreement" for the crafts of trainmen and yardmen (represented by the Brotherhood of Railroad Trainmen, or BRT), conductors (represented by the Order of Railway Conductors and Brakemen, or ORC&B) and hostlers (represented by the Brotherhood of Locomotive Firemen & Enginemen, or BLF&E). (R. 140-143). In response the three organizations, respondents here, went on strike (R. 142). Ten days later, the BRT commenced the picketing here involved. Such picketing was, as described by the Court of Appeals (R. 41), both "peaceful and effective" until restrained by the District Court below some 13 hours later.

FEC-Jacksonville Terminal Operations

The FEC main line runs down the east coast of Florida roughly from Jacksonville to Miami. In Jacksonville the FEC connects, and interchanges cars, with four interstate railroads (R. 198-199, 259, 266): the Atlantic Coast Line Railroad Company (hereinafter Coast Line), the Seaboard Air Line Railroad Company (hereinafter Seaboard), the Southern Rail-

way Company (hereinafter Southern), and the Georgia Southern and Florida Railway Company (hereinafter Georgia Southern). All of this interchange, amounting in 1965 to some 231,787 freight cars (R. 13), is required by contract between FEC and those railroads to be accomplished by FEC's use of the interchange freight yards and facilities and services (including labor services) of the Jacksonville Terminal Company (Defs' Exh. A; R. 232-234, 208-244, 199-201, 259-260, 266, 122, 159). That contract thus provides:

> "Twentieth. That they, the Railway Companies, will use the said station building and passenger facilities and interchange freight yard of the Terminal Company (and no other save as in this Article hereinafter provided), for the handling of all their passenger train business including trains containing mail, baggage and express as well as passengers and for the handling of all the freight business interchanged between the parties hereto, or any of them, in the City of Jacksonville for and during the full term hereby created; * * *" (Defs' Exh. A; R. 232-233, 159, 84-86)

The Jacksonville Terminal Company can best be described as the corporate vehicle for a joint venture by its four owners, the FEC, the Coast Line, the Seaboard, and the Southern. The Terminal Company itself is jointly owned in equal shares by the four railroads (R. 83, 81, 122, 68). By contract among themselves, these four railroads, and Georgia Southern, are each granted equal right to the joint and common use of "all and singular, the passenger and freight terminal facilities of the Terminal Company in the City of Jacksonville and State of Florida, including the passenger station building situated on the south side of

West Bay Street, and the train sheds, tracks and yards of the Terminal Company * * * Together with all the houses, offices, express, baggage and waiting rooms, platforms and appurtenances, and yard, shop and repair and other services, facilities and privileges of whatsoever nature, to the said station building, tracks and property belonging or in any wise appertaining, which may be necessary for the movement of trains and the use, comfort and convenience of passengers, and handling of baggage, mail and express, the transportation, movement and switching of loaded and empty freight cars, and the transaction of passenger and freight business at said City of Jacksonville, * * *" (Defs' Exh. A; R. 212-213, 159). Such use of the Terminal Company's facilities is paid for on a cost basis, allocated according to the percentage use by each railroad of the different categories of the Terminal Company's services, property and facilities (Defs' Exh. A; R. 213-225, 159). Deficits resulting beyond such cost reimbursements are borne by the four owners (Defs' Exh. A; R. 214, 221-222, 223, 225). Profits, if any, are automatically and regularly credited to the four owners in equal proportions without the formality of declared stock dividends (Defs' Exh. A; R. 224, 159, 84-86).

The Board of Directors of the Terminal Company is composed of representatives from each of the four ownership railroads (R. 69, 97). Any capital expenditure or the incurrence of any "extraordinary" operating expense must be referred by the President and General Manager to the Board of Directors (R. 97). And within the Board of Directors almost all important or policy-controlling decisions are not made by majority vote, but rather require the unanimous consent of all the owning roads (Defs' Exh. A; R. 216,

220, 221, 224, 225, 232, 234, 236-237). Significantly, the President or General Manager and all officers elected by the Board of Directors are appointed and serve only with the unanimous consent of the four owner-railroads and must be dismissed upon written request of any one of them, as must also any subordinate official of the Terminal Company (Defs' Exh. A; R. 234, 159). In this regard, the FEC has recently exercised its control and compelled the dismissal of the Terminal Company's President and General Manager and the dismissal of its General Counsel. In affirming the FEC's right-of-control, the Court of Appeals for the Fifth Circuit commented about the unique arrangement whereby the FEC and each of the three other owner-lines is vested with decisive control over the affairs of the Terminal Company as follows:

> "The contract, though plain and positive, is indeed most unusual. The controversy centers around Art. 21. [Footnote 1 omitted] Under it any of the owner-lines is entitled at any time to demand the dismissal of the President or General Manager of the Jacksonville Terminal, their jointly owned terminal subsidiary. Likewise, selection of a new President requires the unanimous approval of all owner-lines.[2] [Footnote 2: This 'unanimous consent' approach is found elsewhere in many parts of the Guaranty and Operating Agreement, including issuance of new bonds, changes in accounting procedure, disbursement of certain funds, incurring debts for construction, furnishing of new facilities, issuance of capital stock, and the like.]" *Jacksonville Terminal Company* v. *Florida East Coast Ry. Co.*, (5 Cir., July 7, 1966) — F. 2d — (No. 22931) (page 2 of slip opinion)

In short, the FEC and the four other "tenant line railroads" (R. 79) each has the right to use equally and

in common all the tracks, yards, switches, facilities and services of the Jacksonville Terminal Company. In addition the FEC and the three other owner-lines each has a decisive right-of-control over the Terminal Company's management and operations.

Availing itself of these rights, the FEC daily operates its trains with FEC crews both on and through the Terminal Company premises (R. 132, 152, 92, 109). In the case of FEC-Coast Line interchange, the FEC regularly and daily runs its trains completely through the Terminal Company's system from the south end to the north end and on into the Coast Line's Moncrief switching yard (R. 131-132, 152, 70). In regard to FEC-Seaboard interchange, the FEC interchanges cars with Seaboard in the Honeymoon and YH switching yards located on Terminal Company premises and within the Terminal Company's boundaries, or right-of-way (R. 136-137; Pls' Exh. 1-map; R. 183, 72, 75, 92).[5]

Not only does the FEC itself operate on Terminal Company premises, but the Terminal Company in the course of such operations regularly furnishes to the FEC a multitude of skilled labor services essential to the FEC movements. These were described by the

---

[5] Witness Satterwhite testified that the YH yard is owned by the Terminal Company and Honeymoon Yard by Seaboard (R. 136). Plaintiffs' Exhibit #1 (an engineer's map prepared in the office of the Terminal Company's president, R. 72), however, shows both YH and Honeymoon yards to be located within the "J.T. Co. R/W" which presumably stands for Jacksonville Terminal Company right-of-way (Pls' Exh. 1—map; R. 183, 72, 75, 92). Access for FEC to both yards is only available through Terminal Company premises and over Terminal Company tracks (R. 137).

Terminal Company's president and general manager as follows (R. 91-93):

"Q. All right, sir. What services are performed by the Jacksonville Terminal Company for the Florida East Coast Railroad?

A. We service their passenger equipment, their passenger engines, in and out; as well as their coaches. For a car cleaning, ice, and water. And any Terminal expense in the way of airconditioning or repairs that might be needed.

Q. All right, sir. In the operation of the Terminal Company, insofar as furnishing services to the Florida East Coast, is an integral part of the op eration of the Florida East Coast Railroad?

Mr. Adams: Your Honor, that calls for a conclusion as to what the Florida East Coast considers an integral part of the operations.

The Court: I will let the witness answer, if he can. I wi l overrule the objection.

The Witness: It is necessary to operate from the passenger station down the St. Johns River where they get on their own track.

By Mr. McAliley:

Q. All right, sir. It is also necessary in terms of interchanging with freight, to use the Terminal Company; is it not?

A. Oh, yes. They use Terminal Company tracks altogether to interchange freight with the three other railroads.

Q. And this is done on a day-to-day, week-to-week, and month-to-month basis?

A. Yes.

Q. The interchange of freight?

A. Yes.

Q. On your property?

A. Yes.

Q. With your assistance?

A. With our employees, yes, sir.

Q. And with your facilities?

A. Yes."

Jacksonville Terminal Company employees throw switches for FEC train movements (R. 78, 93, 120-121), operate signals for FEC train movements (R. 78), repair FEC engines and passenger cars in the Terminal Company's mechanical department (R. 113), maintain tracks, switches, towers, signals, etc. used by FEC (R. 110), inspect passenger cars for FEC (R. 93), and themselves directly interchange freight cars with FEC (R. 110). Over 31 per cent of all Terminal Company freight interchange (R. 13, 109),[6] and over 24 per cent of *all* interchange in 1965 was FEC's (R. 13). Significantly, during the picketing here involved, FEC supervisors were called in and supplied to perform some of these essential labors (R. 91, 79). The travelling public, of course, does business with FEC on the Terminal Company premises (R. 93).

The very injunction entered by the District Judge below in January, 1963, in the case arising out of the earlier non-operating unions' strike, *Florida East Coast Ry. Co.* v. *Jacksonville Terminal Company et al.*, Case No. 63-16, U.S. District Court, Middle District, Florida (Defs' Exh. A; R. 245-254. 159), recites and catalogues the many and varied services that Terminal Company employees, if they report to work, must perform for a struck carrier (R. 251, 253). The FEC by obtaining such injunction literally drafted the Terminal Company and its employees (as well as petitioners Coast Line and Seaboard and their employees to the

[6] Which of the five railroads using the Terminal is the largest single user is not disclosed by the record, but obviously FEC's freight use is among the highest. ACL has other trackage by which it can by-pass the Terminal (R. 131). It cannot be said that the FEC is not a principal user of the Terminal.

extent covered by the injunction) to become FEC's allies in FEC's economic battle with FEC's own employees. Brother union workers were thereby dragooned into FEC's service and forced to perform tasks for that carrier indispensable to its continued operations.[7]

Both petitioners Seaboard and Coast Line advised the District Court that the Terminal Company was "a necessary adjunct" to their operations (R. 15, 11). By the same token, it clearly appears that the Terminal Company is a necessary adjunct—and an integral, integrated part—of FEC's regular operations. As stated below by the District Court and counsel for the Terminal Company (R. 102):

> "The Court: Is it significant that the FEC could not operate its trains without the assistance of the Terminal? It is an integral part of the operations of the FEC, is it not?
>
> "Mr. Adams: It is true that the FEC could not operate its trains without the assistance of the Terminal Company. And neither could the Atlantic Coast Line Railroad Company or the GS&F or the Southern or the Seaboard.
>
> I think this is the reality of the situation.
>
> * * *
>
> * * *"

[7] Although petitioners each asserted to the District Court in Case No. 63-16 that the FEC had failed to join indispensable parties to that case (Defs' Exh. A; R. 259, 265, 159), they each vigorously opposed respondents' and the non operating unions' efforts to intervene in that case (R. 197, 274-283) and the District Judge refused to allow such intervention (R. 284).

The Picketing

On May 4, 1966, the BRT established pickets at various foot, road, and rail entrances to the Jacksonville Terminal Company.[8] In all cases and at all times these pickets conducted themselves in an orderly and peaceful manner (R. 66-67, 88-89). There were no threats, fights, epithets, or physical blockage of traffic or of egress and exit; in total numbers, there were 32 pickets spread out over a perimeter of 1½ to 2 miles (R. 88-89). Each picket carried a sign conveying the message:

FELLOW RAILROAD MEN
Do Not Cross or Assist F.E.C.
B. OF R. T.
ON LEGAL
STRIKE
AGAINST F.E.C.
Please Make Common Cause With Us In
Major Dispute Against F.E.C.

In each and all cases the pickets were located on public property (Pls' Exh. 1; R. 165-183, 75, 72-137). In each and all cases the pickets were stationed as close as possible, without trespassing on private property, to the place either (1) where the FEC was regularly

[8] Petitioners erroneously state that the picket line was thrown up by all three respondents (Petitioners' brief, p. 8). Significantly, the District Court did not so find (R. 28), and counsel for the Terminal Company conceded in the trial court that there was no evidence of actual participation by the ORC&B or BLF&E in conducting the picket line (R. 163-164). The names of these two organizations had been blocked out of the picket signs (R. 150-151). Obviously at one time there had been plans for joint picketing; obviously such plans had been abandoned. The District Court included the two non-picketing unions in its injunction on the basis that they had threatened to picket (R. 28).

conducting its operations in making interchange of cars with petitioners, or (2) where Terminal Company employees who regularly perform services for the FEC report to work or perform such work (R. 89-90).

Three particular picket locations, however, have been singled out by petitioners as involving or affecting only Coast Line or Seaboard train movements, and therefore as evidencing purely secondary picketing (petitioners' brief, pp. 9-10, note #13). These are the locations at Dennis Street, Stockton Street, and Acorn Street (petitioners' brief, p. 10, notes #13, 14).

Dennis Street: Petitioners claim that the BRT picketed the Coast Line tracks at Dennis Street. The location, of the pickets at Dennis Street, however, is conclusively shown by both photographic evidence and eye-witness testimony of petitioners' own witness, Mr. Jennette, the president of the Terminal Company. His testimony on cross-examination is as follows (R. 93-94):

> "Q. Oh, one question about Dennis Street. Now, so that the record can be very clear, where is Dennis Street on the map?
>
> A. (Indicating).
>
> Q. All right, sir. Now, adjacent or beside Dennis Street there is a dirt road that is an entrance into your premises?
>
> A. There is a driveway that leads between some leased property and our material yard where we have cross and switch ties stored, and this driveway is also used by a tenant of ours who is in the paving business and has lime rock and equipment stored east of that driveway.
>
> Q. And the employees sometimes go to work through that driveway?
>
> A. They don't report to work there, but they have to go in and out of there to get material.

Q. This morning, sir, did you or any of your supervisors call employees and instruct them to come in through that driveway near Dennis Street?

A. Not to my knowledge.

Q. All right, sir. Now, did you ever see any picket at Dennis Street walking across the railroad track, sir? Or were they located on that driveway?

A. At the time I saw them, they were located on the driveway."

The photographic evidence confirms this testimony clearly, and shows that the pickets at Dennis Street were *not* picketing the Coast Line tracks (Pls' Exh. 1; R. 182, 75; compare photograph of pickets at Dennis Street, R. 182, with photographs immediately preceding, R. 181-180). The only evidence to the contrary was an affidavit given by Mr. Jennette not subject to cross examination and objected to by defendants (R. 10, 98, 160)[9] and the hearsay testimony of the Coast Line's general manager, L. T. Andrews (R. 63, 71, 130), who admitted on cross-examination he had not personally observed the picketing he was describing (R. 68). Significantly, the District Court made no finding that the BRT had picketed any exclusively Coast Line or Seaboard operations, and found only that BRT on May 4, 1966 "began to picket the premises of the Jacksonville Terminal Company at numerous places." (R. 28).

Stockton Street: The pickets at Stockton Street did picket the Seaboard tracks at that location. These are

[9] See Section 7 of the Norris-LaGuardia Act, 29 U.S.C. 107, pp. 41a-43a of petitioners' brief, providing that no injunction shall issue in any case involving or growing out of a labor dispute "except after hearing testimony of witnesses in open court (with opportunity for cross-examination) • • •."

tracks that lead into YH and Honeymoon yards where all of the interchange between Seaboard and FEC takes place (R. 136-137). Stockton Street is the closest public road crossing to those yards (R. 87-88, 137). Seaboard employees approaching YH and Honeymoon yards by way of Stockton Street from the south-west to do business with FEC can be appealed to at no closer location to the place where FEC regularly operates vis-a-vis Seaboard than at Stockton Street, as the map, plaintiffs' exhibit 1, R. 183, 75, plainly reveals.

Acorn Street: The testimony is conflicting as to the location of the pickets at Acorn Street. Mr. Jennette, president of the Terminal Company, testified that the pickets on Acorn Street were located "at the entrance to our Repair Shop and right near the corner of Acorn and Beaver * * *" (R. 74). This is a place, he confirmed, where Terminal Company employees report to work (R. 90). Mr. Satterwhite, assistant superintendent of Seaboard, on the other hand, testified that the pickets were at the crossing of the Seaboard over Acorn Street (R. 136). If plaintiffs took photographs of the pickets at Acorn Street as they did of the other picket locations, such photographs were not produced. In any event, the Seaboard crossing of Acorn, like the Seaboard crossing at Stockton, is the closest public place to Seaboard's northern access route to YH and Honeymoon yards where Seaboard and FEC perform their interchange business with each other. It is not, in other words, track used by Seaboard for business exclusively unrelated to FEC. It is the only place where pickets can appeal to Seaboard employees approaching YH and Honeymoon yards from the north to interchange with FEC, and is the closest possible

place to where such interchange takes place (without trespassing on private property).

The Reserved Gate

Shortly after the non-operating unions went on strike against the FEC in January, 1963, the Terminal Company posted signs at two employee foot entrances to its premises purporting to limit one entrance (at Stuart and Bay Streets) exclusively for use of FEC employees and the other entrance (at Johnson and Bay Streets) for the exclusive use of Seaboard, Coast Line, Southern and Terminal Company employees (R. 79-80; Pls' Exh. 1-photographs, R. 175, 174, 172). Obviously neither entrance could be used by either category of employees entering on the premises by rail; nor did the FEC gate sign pretend to apply to persons coming on the premises to do business with the FEC, e.g., prospective passengers, shippers, suppliers, etc.

The record further shows that the restrictions posted as to either gate were not observed.

As to the gate at Johnson and Bay Streets, designated for use by Terminal Company employees, the testimony of Mr. Jennette, Terminal Company president and general manager, shows that actually such employees use a myriad of other entrances when entering by foot (R. 89-90).

Likewise, the evidence shows that the posted gate restrictions at Stuart and Bay Streets were neither observed nor enforced.

Thus, Mr. Jennette testified on cross-examination (R. 86-87):

> "Q. Now, as to this gate and the sign erected near Stuart Street, have you ever seen a Florida

East Coast Railway employee use that entrance?

A. No. sir.

Q. Do you know for a fact, sir, that employees of the Florida East Coast Railway use the other entrance?

A. No, I don't know that either.

Q. All right, sir. How do they get in there?

A. Well, as indicated in these pictures, there are many ways that you can enter the Terminal Company."

Finally, of course, the fact should be noted that a limitation on picketing to a gate used exclusively by FEC employees prohibits absolutely any appeal being made or communicated to employees of the Terminal Company or connecting carriers who enter the premises to perform work for the FEC or to do business with FEC by interchanging cars with it.

SUMMARY OF ARGUMENT

This case, as held by the Court of Appeals below, involves and grows out of a labor dispute between petitioners and respondents, clearly within the terms and spirit of the Norris-LaGuardia Act. The labor injunction as entered by the District Court below was, therefore, entered without and beyond the jurisdiction of any court of the United States.

Respondent BRT's conduct in picketing various rail and foot entrances to the Jacksonville Terminal Company was legitimate traditional concerted activity directed at a primary situs of the operations of the Florida East Coast Railway Co., where such carrier receives and makes deliveries of railroad cars at interchange, and receives certain day to day services essential to its operations from the Terminal Company and connecting carriers. Such conduct is wholly within

the definitional language of the Norris-LaGuardia Act and fully justified by the economic self-interest of respondent BRT and those employees of petitioners who honored respondents' appeal.

The historical development of the "national labor policy" from the passage of the labor provisions of the Clayton Act of 1914, 15 U.S.C. § 17, 29 U.S.C. § 52, frustration of such provisions in the courts, e.g., *Duplex Printing Press Co.* v. *Deering,* 254 U.S. 443 (1921), and reassertion by Congress of these initial purposes in the Norris-LaGuardia Act, *United States* v. *Hutcheson,* 312 U.S. 219, 235-236, demonstrate beyond cavil that respondent BRT's activity under any view of its essential nature, i.e., primary or secondary, is embraced and protected by the clear language of Norris-LaGuardia.

Congress in the Railway Labor Act, 45 U.S.C. § 151 et seq., did not purport to establish procedures wherein all rail labor disputes would be settled without self-help becoming available. *Brotherhood of Locomotive Engineers* v. *B. & O. RR. Co.,* 372 U.S. 284 (1963). The Norris-LaGuardia Act was intended by Congress, and has been held by this Court to be squarely applicable to railway labor controversies when self-help and the resolution of a dispute through the free play of economic force becomes available. *Order of Railroad Telegraphers* v. *Chicago* v. *N.W. R. Co.,* 362 U.S. 330 (1960); *Brotherhood of R.R. Trainmen* v. *Toledo P.&W.R. Co.,* 321 U.S. 50 (1944).

Petitioners point to no specific provision in the Railway Labor Act which purports to require "accommodation" of Norris-LaGuardia. Neither protection of the jurisdiction of any agency under the Railway Labor Act, *Brotherhood of R.R. Trainmen* v. *Chicago R. & I.*

Co., 353 U.S. 30 (1957), nor the enforcement of any mandatory statutory duty, *Virginian R. Co.* v. *System Federation*, 300 U.S. 515 (1937); *Brotherhood of R.R. Trainmen* v. *Howard*, 343 U.S. 768 (1952), is suggested by petitioners to justify their bold plea for "* * * judicial obliteration of the [Norris-LaGuardia] Act under the soft euphemism of 'accommodation' * * *", *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, 209 (1962). Due regard for the role of Congress in weighing the delicate legislative considerations involved in any limitations upon respondents' self-help right requires rejection of petitioners' argument.

The decision of the Court of Appeals below that the District Court lacked jurisdiction to enter the labor injunction here involved is supported by the wholly separate ground of the applicability of the doctrine of jurisdictional "preemption." Respondents' conduct herein, alleged to be an illegal "secondary boycott" by petitioners in this case and companion litigation to the present case,[10] is "arguably subject" to the exclusive primary jurisdiction of the National Labor Relations Board. In such circumstances state and federal courts alike lack jurisdiction to decide on the merits the jurisdictional question prior to an NLRB ruling. *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 239 (1959); *Marine Eng. Ben. Ass'n.* v. *Interlake S.S. Co.*, 370 U.S. 173 (1962); *Hanna Mining Co.* v. *Marine Eng. Ben. Ass'n.*, — U.S. —, 86 S. Ct. 327 (1965).

The protections afforded by the Clayton Act are fully applicable to respondent BRT's conduct herein, and such provisions expressly relieve the conduct from the

---

[10] *Brotherhood of R.R. Trainmen* v. *Jacksonville Terminal Co.*, No. 244 O.T. 1966.

taint of being a violation of any law of the United States. *United States* v. *Hutcheson, supra.*

Even as against the standards established under Section 8(b)(4) of the LMRA, 29 U.S.C. § 158(b)(4), respondent BRT's conduct is lawful primary picketing at a "common situs" which is an integral part of the struck carrier's system, which is owned and controlled in part by FEC, which is a place where FEC trains and crews daily operate and where "struck work" is being done.

Respondent BRT's conduct does not violate the Interstate Commerce Act in that it is wholly justified by economic self-interest and protected by the Clayton Act. Petitioners' duties under the Interstate Commerce Act are not absolute, and the strike and picketing of FEC operations by respondent BRT justifies petitioners' inability to perform interchange.

ARGUMENT

I. THE NORRIS-LAGUARDIA ACT, BY ITS OWN TERMS, BY LONG-STANDING INTERPRETATION OF THIS COURT, AND READ EITHER IN CONNECTION WITH OR APART FROM THE RAILWAY LABOR ACT, PRECLUDES FEDERAL COURT JURISDICTION TO ENTER THE LABOR INJUNCTION HERE INVOLVED [11]

The Court of Appeals below found that Sections 4 and 13 of the Norris-LaGuardia Act, 29 U.S.C. §§ 104,

---

[11] While petitioners urge an "accommodation" of the Norris-LaGuardia Act to the Railway Labor Act as the initial step for the Court to consider, respondents submit that a sounder approach would be first to examine the applicability of the Norris-LaGuardia Act to the present dispute, and then to proceed to an examination of the alleged necessity of an "accommodation." One must assume that the impetus for suggesting the initial consideration of "accommodation" involves an appreciation of the applicability of the Norris-LaGuardia Act to the purported situation, said to require "accommodation."

113, were applicable to deprive the District Court of jurisdiction to enter the labor injunction here at issue.

These provisions are as follows:

Section 4 (29 U.S.C. Section 104):

> "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment; . . .
>
> (e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence; . . .
>
> (i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified."

Section 13 (29 U.S.C. § 113)

> When used in this chapter, and for the purposes of this chapter—
>
> (a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or

associations of employers and one or more employers or associations of employers; (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "person participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer or employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia. Mar. 23, 1932, c. 90, § 13, 47 Stat. 73.

Looking to the language of the Act itself, it would seem apparent that the present dispute falls well within the scope of the statutory definitions.

The case arises out of a labor dispute between the Florida East Coast Railway Company and respondents

and involves a "labor dispute" within the meaning of the Norris-LaGuardia Act between respondents and petitioners. In the parlance of Railway Labor Act decisions the dispute between respondents and FEC, involving changes in rules, rates of pay, and working conditions, is a "major dispute". After the parties have exhausted the procedures of the Railway Labor Act, as they have done here, and no agreement has been reached, each party is entitled to resort to "self-help", *Brotherhood of Locomotive Engineers* v. *Baltimore & Ohio Railroad Company*, 372 U.S. 284 (1963); *Order of Railroad Telegraphers* v. *Chicago & N.W. R. Co.*, 362 U.S. 330, 80 S. Ct. 761 (1960); *Florida East Coast Railway Company* v. *Brotherhood of Railroad Trainmen*, 336 F. 2d 172 (5th Cir. 1964), cert. den., 379 U.S. 990; *Order of Railway Conductors and Brakemen* v. *Louisville & Nashville Railroad Company*, 331 F. 2d 368 (5th Cir. 1964).

As a part of their self-help right, respondents[12] were peacefully patrolling at the premises of the Jacksonville Terminal Company giving publicity to their dispute and appealing to others to refuse to perform work for, make deliveries to, and take deliveries from the struck carrier, FEC. The relief which respondents sought against petitioners, through their appeals to petitioners' employees, was well within the scope of legitimate, traditional labor objectives. Respondents sought to halt FEC operations by peacefully persuading petitioners, both supervisors and employees, at the situs where they normally do business with FEC,

---

[12] Although the evidence shows clearly that only BRT actually picketed, all three union respondents were enjoined, and they will require "accommodation."

to cease performing work for the FEC essential to the regular, day-to-day operations of the FEC.[13]

This conduct of respondents, together with the resistance of the petitioners, presents the factual nexus of a labor dispute, both traditional and well within the scope of Norris-LaGuardia protection. To say, as do petitioners, that this dispute is not a "* * * controversy concerning terms or conditions of employment * * *" 29 U.S.C. § 113(c), is merely to ignore economic reality, which the Court of Appeals below was unwilling to do. This dispute vitally concerns the terms and conditions of employment, not only of the individuals patrolling at the Terminal Company premises, but also of those Terminal Company, Coast Line, and Seaboard employees who exercised their free choice in honoring the requests of their fellow industry and craft employees. See *Brotherhood of Locomotive Firemen and Enginemen* v. *Florida East Coast Ry. Co.*, 346 F. 2d 673 (5 Cir. 1965) It does not take the economic acumen of a Keynes to see clearly the vital relationship of this controversy to the terms and conditions of employment of every employee on either side of the picket line.

As characterized by the Court of Appeals, below:

> "In this case the picketing union, allegedly attempting to limit the scope of its appeal to its dispute with FEC, had an obvious interest in putting a stop to the Terminal Company's performing services related to the normal, day-to-day operation of FEC trains—operating with striker replacement crews. A similar interest is present in any case in which a labor group attempts to bring secondary pressure upon the employer with whom its primary dispute exists by means of exerting

[13] See *United Steelworkers* v. *NLRB*, 376 U.S. 492 (1964); *Electrical Workers* v. *NLRB*, 366 U.S. 667 (1961).

primary pressure upon a secondary employer, who has aligned himself with the primary employer in some substantial manner—here by providing certain essential services and facilities to the primary employer, FEC.

Turning next to a further examination of the economic interests of the responding employees of the secondary employer-appellees, it should be emphasized that their interests go beyond the "common industrial interest" discussed above. It can be stated unequivocally that Seaboard and FEC are in direct competition for passenger and freight traffic south of West Palm Beach. As far as the ACL and FEC are concerned, the competition, although less direct, cannot be said to be non-existent, especially between Jacksonville and a line drawn from Orlando to the Atlantic Ocean. The significance of this competition lies in the fact that the FEC, by changing work rules and lowering wages, presents a direct threat to the job security of the employees of SAL and ACL. In other words, by operating under such lower than union standards of employment, the FEC enjoys a competitive advantage, which may enable it to increase its share of traffic, vis a vis, ACL and SAL, and, consequently, the latter two railroads could be forced to either (a) lower their standards or (b) lay off a sufficient number of employees to compensate for their reduced traffic share. Accordingly, it is improper to regard the responses of ACL and SAL employees as merely sympathetic." 362 F. 2d at 654-655, R. 48-49.

Respondents respectfully submit that this analysis by the Court of Appeals below is more nearly in accordance with the language and spirit of the Norris-LaGuardia Act, and this Court's prior decisions, than the narrow construction urged by petitioners.

At best petitioners seem to be asking the Court to repeal by judicial construction that portion of the Norris-LaGuardia Act which makes perfectly clear that a labor dispute under the Act may exist, " * * * regardless of whether or not the disputants stand in the proximate relation of employer or employee," 29 U.S.C. § 113 (c). See also, *Marine Cooks & Stewards* v. *Panama Steamship Co.*, 362 U.S. 365 (1960).

The outline of the development of the "national labor policy" over the past 60 years and the role of the Norris-LaGuardia Act in relation to it are familiar, and have been examined and reexamined by this Court in numerous opinions. See cases cited *infra*, at p. 37. The contentions raised by petitioners as to the inapplicability of the Norris-LaGuardia Act to the present controversy, are not new ones. An expansive view of this Court's function in "accommodating" Norris-LaGuardia to various federal labor and nonlabor legislation has frequently been urged in the past,[14] as have narrow definitional exercises defining participants out of the coverage of Norris-LaGuardia.[15]

Petitioners here offer both versions of the familiar arguments. In light of these contentions some examination of the terms and purposes of the relevant federal legislation is appropriate.

---

[14] Respondents suggested "accommodation" of Norris-LaGuardia to the Interstate Commerce Act in the Court of Appeals below, see R. 50, 362 F.2d at 655, but have apparently abandoned such contention in this Court. See, *Order of Railroad Telegraphers* v. *Chicago & N.W. R. Co.*, 362 U.S. 330, 339, n. 15 (1960).

[15] See, *e.g.*, dissenting opinions, *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552 (1938); *Lauf* v. *E. G. Skinner & Co.*, 303 U.S. 323 (1938).

Pre-Clayton Act common law concepts of conspiracy in restraint of trade, together with the utilization by the courts of the Sherman Anti-Trust Act, 15 U.S.C. §§ 1, *et seq.*, as a weapon against labor activity in such cases as *Loewe* v. *Lawlor,* 208 U.S. 274 (1908) (the "Danbury Hatters" case), need no elaboration.

The labor provisions of the Clayton Act of 1914, 15 U.S.C. § 17, 29 U.S.C. § 52, were, of course, passed as a result of what Congress believed to be unwarranted judicial interference in the economic balance of power and represent the initial, yet still vital, federal statutory recognition of the legality of labor organizational and economic activity.[16] Sections 6 and 20 of the Clayton Act, are clearly relevant to this case and are set out in this brief at pages 1-3.

Section 20 of the Clayton Act describes various forms of labor conduct, which in terms are freed from the ban of federal injunctions. In this statute, however, Congress went further ". . . and also relieved such practices of all illegal taint by the catch-all provision, 'nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.'" *United States* v. *Hutcheson,* 312 U.S. 219, 230 (1941). Congress expressly stated in the Clayton Act that it shall not be a violation "of any law of the United States" peacefully to persuade any person to work or abstain from working, or to cease patronizing a party to a dispute or to withhold services from such party. The public policy of the

[16] See speech by John W. Davis of West Virginia in support of the Wilson Bill (HR 11032, 62nd Cong., 1st Sess.), from which the labor provisions of the Clayton Act were largely taken, 48 Cong. Record 6438, and opposing speech of Mr. Moon of Pennsylvania, 48 Cong. Record 6421.

United States, as here declared, is to leave the worker in this nation "full freedom" for "concerted activities for the purpose of mutual aid or protection."

This public policy, however, was frustrated by a series of judicial decisions limiting the Clayton Act's scope so as not to apply its terms to most labor disputes. The first case to come before the Court involving the construction of Section 20 of the Clayton Act was *Duplex Printing Press Co.* v. *Deering,* 254 U.S. 443 (1921). Here the Machinists union sought to organize the only non-union manufacturer among the four national manufacturers of large newspaper printing presses. Since a direct strike against the plant was ineffectual, pressure was exerted upon the company by local unions refusing to repair or work on Duplex presses wherever they were installed or to work for anyone who used them, by appealing to employees of hauling companies not to carry the presses, and various other techniques described by the Court as an attempt to effectuate a 'secondary boycott' of Duplex presses.

The Company filed suit for an injunction under the Sherman Act, and the union relied upon Section 20 of the Clayton Act as a defense to the action.

A majority of the Court held (in a definitional exercise similar to that urged by petitioners herein) that the union conduct was not protected by Section 20 of the Clayton Act in that it was not normal and legitimate activity (as defined by the Court) and the relation of the defendant local unions to the dispute "concerning terms or conditions of employment" was too remote in that the participants did not stand in the proximate relationship of employer and employee.

Justice Brandeis, joined by Justices Holmes and Clarke, dissented in an opinion which has "* * * carried the day in the courts of history as evidenced by subsequent congressional action and decisions of this Court." *Meat Cutters Union* v. *Jewel Tea Co.*, 381 U.S. 676 (1965), Goldberg, J., joined by Harlan and Stewart, JJ., concurring at 703. Disagreeing with the majority's narrow reading of the Act, Justice Brandeis emphasized the concept of the economic self-interest of the participants as the touchstone in determining the proximity of their economic relation to the dispute, and, therefore, whether their conduct falls within the scope of the protections of Section 20 of the Act. Justice Brandeis considered the Clayton Act as "* * * declar[ing] the right of industrial combatants to push their struggle to the limits of the justification of self-interest." 256 U.S. at 488.[17]

In 1932 Congress passed the Norris-LaGuardia Act, adopting the views of Justices Brandeis, Holmes, and Clarke.

Examining the opinions of this Court subsequent to the passage of the Norris-LaGuardia Act, it becomes apparent that the essential purpose of that Act was something more than merely to reverse that aspect of *Duplex Printing* which restricted the anti-injunction provisions of Section 20 of the Clayton Act to the immediate employer-employee relationship. Cf. Peti-

---

[17] Additional cases narrowly construing and emasculating Section 20 of the Clayton Act include *Bedford Cut Stone Company* v. *Journeymen Stone Cutters' Ass'n. of North America*, 274 U.S. 37 (1927); *American Steel Foundries* v. *Tri-City Central Trades*, 257 U.S. 184 (1921); *Truax* v. *Corrigan*, 257 U.S. 312 (1921); See generally Frankfurter and Greene, *The Labor Injunction* (1930), pp. 165-191.

tioners Brief at p. 48. While intimated in the holdings of such cases as *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552 (1938), *Lauf* v. *E. G. Shinner & Co.*, 303 U.S. 323 (1938), and *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products*, 311 U.S. 91 (1940), this became plainly evident in the opinion of Mr. Justice Frankfurter for the Court in *United States* v. *Hutcheson*, 312 U.S. 219 (1941).

There the Government urged, as do petitioners herein, that Norris-LaGuardia was only meant to reverse that portion of *Duplex* which dealt with the immediacy of the employer-employee relationship. The Court there rejected such a narrow interpretation:

> "* * * Such legislation must not be read in a spirit of mutilating narrowness, on matters far less vital and far less interrelated, we have had occasion to point out the importance of giving 'hospitable scope' to Congressional purpose even when meticulous words are lacking. * * *.
>
> "The relation of the Norris-LaGuardia Act to the Clayton Act is not that of a tightly drawn amendment to a technically phrased tax provision. The underlying aim of the Norris-LaGuardia Act was to restore the broad purpose which Congress thought it had formulated in the Clayton Act but which was frustrated, so Congress believed, by unduly restrictive judicial construction. * * * The Norris-LaGuardia Act reasserted the original purpose of the Clayton Act by infusing into it the immunized trade union activities as redefined by the later Act. In this light Sec. 20 removes all such allowable conduct from the taint of being a 'violation of any law of the United States,' including the Sherman Law." 312 U.S. at 235-236.

Petitioners say that Mr. Justice Roberts, dissenting in *Hutcheson*, "mischaracterized" the conduct of the

defendant unions there involved, in labeling such conduct as a secondary boycott. Petitioners Brief p. 45. Regardless of the correctness or incorrectness of the label applied, a close reading of the facts in *Hutcheson* demonstrates the applicability of that decision to the present case. There the Carpenters and Machinists unions became involved in a dispute over erecting and dismantling machinery for the Anheuser-Busch Company. Unable to secure the demanded jobs from Anheuser-Busch, the Carpenters struck not only that company and a construction firm doing work on its premises, but also struck and picketed an adjacent employer who leased land from Anheuser-Busch, and a construction company which was erecting a building for the lessee. Presumably the picketing of the adjacent premises was for the purpose of placing additional pressure on Anheuser-Busch in its dispute with the Carpenters. Yet the Court there held that such conduct was not only immune from a federal injunction by reason of Norris-LaGuardia, but also lawful conduct under Section 20 of the Clayton Act.

The *Hutcheson* decision, read together with a series of companion memorandum decisions affirming lower court dismissals of Sherman Act indictments,[18] which

[18] Additional memorandum opinions of the Court, in all of which judgments sustaining demurrers to Sherman Act indictments were affirmed, include: *United States* v. *International Hod Carriers' and Common Laborers' District Council of Chicago*, 313 U.S. 539 (1941), where the defendant organizations threatened and induced strikes on the part of customers' employees to prevent the sale by manufacturers of labor-saving concrete truckmixers in Chicago; *United States* v. *United Brotherhood of Carpenters and Joiners of America*, 313 U.S. 539 (1941), in which defendant A.F.L. unions, subsequent to the certification of a C.I.O. union by the NLRB as exclusive bargaining agent of a lumber firm's employees, took such measures as (a) instigation of strikes by customer's em-

involved various forms of conduct constituting traditional "secondary" activity, compels the conclusion that prior to the passage of the Taft-Hartley Act in 1947, such conduct was not enjoinable under Norris-LaGuardia, and was legal under the Clayton Act.[19]

The Taft-Hartley Labor-Management Relations Act of 1947, in Section 8 (b) (4) of that Act, 29 U.S.C. § 108 (b) (4), of course, added a congeries of provisions declaring certain forms of secondary activity by unions to be violative of the National Labor Relations Act. Such secondary conduct, as therein defined, was made enjoinable by federal courts at the request of the National Labor Relations Board. See 29 U.S.C. §§ 160(h), (j), (l).

As this Court noted in *NLRB* v. *Denver Bldg. & Construction Trades Council,* 341 U.S. 675 (1951), Senator Taft, sponsor of the bill in the Senate and Chairman of the Senate Committee on Labor and Public Welfare, said, in discussing Section 8(b) (4) of the Act: "* * * under the provisions of the Norris-LaGuardia Act, it became impossible to stop a second-

ployees (b) circulation of a blacklist, and (c) refusal to work on "unfair" goods; *United States* v. *Building & Construction Trades Council of New Orleans,* 313 U.S. 539 (1941), in which defendant A.F.L. unions refused to handle materials delivered by C.I.O. represented truckers, although the C.I.O. was NLRB certified and labor contracts had been entered into between the C.I.O. union and the trucking firms.

[19] Petitioners fail to suggest what purpose was embodied in the Taft-Hartley amendments prohibiting certain forms of secondary activity and permitting the National Labor Relations Board to seek injunctions against it, if, as petitioners suggest, such conduct was illegal and enjoinable without reference to those amendments. All the controversy concerning Taft-Hartley becomes meaningless under petitioners' view.

ary boycott or any other kind of strike, no matter how unlawful it may have been at common law. All this provision does is to reverse the effect of the law as to secondary boycotts. * * *" 93 Cong. Rec. 4198.

It was against this background that Justice Frankfurter, again writing for the Court in *Bakery Sales Drivers' Union* v. *Wagshal*, 333 U.S. 437 (1948), discussed the applicability of the Norris-LaGuardia Act to traditional secondary activity, as against a claim of mootness based upon the Taft-Hartley amendments:

> "The short answer to the argument that the Labor-Management Relations Act of 1947, P.L. 101, 80th Cong., 1st Sess., § 10 (h), 29 U.S.C.A. § 160(h), has removed the limitations of the Norris-LaGuardia Act upon the power to issue injunctions against what are known as secondary boycotts, is that the law has been changed only where an injunction is sought by the National Labor Relations Board, not where proceedings are instituted by a private party." 333 U.S. at 442.[20]

It would seem safe to assume with the Court of Appeals below, and Mr. Justice Frankfurter, "reputedly the author of the [Norris-LaGuardia] Act, 362 F.2d at 653,[21] and the author of the opinions of

---

[20] Rather than "stating the argument" of one of the parties, as petitioners have suggested (Petitioner's Brief, p. 46), Justice Frankfurter was here answering it.

[21] See Norris, *Fighting Liberal* (1945), pp. 312-313, where Senator Norris wrote concerning the origins of the Norris-LaGuardia Act as follows:

> "I believe it was one of the most comprehensive conscientious investigations a congressional subcommittee has undertaken. I heard every syllable of testimony that was given, and my two loyal and conscientious associates heard nearly all of it. At the completion of the hearings, my associates directed

the Court in *United States* v. *Hutcheson, supra,* and the *Wagshal* case, that the Norris-LaGuardia Act indeed extends to traditional secondary activity.[22]

Marine Cooks & Stewards v. *Panama Steamship Co.,* 362 U.S. 365 (1960), is a later, clearly relevant decision bearing on the existence of a "labor dispute" under the facts of the present controversy. There the owners of a foreign flag vessel sought an injunction against peaceful picketing by a union of the ship in

---

me to summon to our assistance some noted attorneys, who had had long experience with labor legislation and with the trial of labor cases in the courts. The result was that I requested Felix Frankfurter of the Harvard Law School (now a justice of the United States Supreme Court), Donald Richberg of Chicago, Professor Herman Oliphant of Johns Hopkins, Edwin E. Witte, of the University of Wisconsin, and Francis B. Sayre of Harvard to aid in the preparation of the substitute bill; and they all agreed to undertake the labor. I urged them to arrange to come to Washington at the same time, so that they might not only counsel with the subcommittee but also confer and deliberate among themselves.

And then I turned over the Judiciary Committee rooms to these men.

I have always thought that the method of procedure which was adopted was significant. They locked themselves in, and for forty-eight hours gave their undivided attention and study to every court decision bearing upon the rights of organized labor. They reviewed the decisions of the United States Supreme Court with the most scrupulous care, aware that in the great conflict of interest certain to arise from legislation of this character, the constitutionality of the law would be subjected to challenge immediately."

---

[22] See also dissenting opinion of Douglas, J. in *International Union, U.A.W.* v. *Wisconsin Employment Relations Bd.,* 336 U.S. 245, 266, citing a ruling that prior to 1947 the right to engage in a secondary boycott was protected concerted activity under the Wagner Act. *N.L.R.B.* v. *Peter Cailler Kohler Swiss Chocolates Co.,* (2 Cir.) 130 F. 2d 503, 505.

American waters, and also against threatened picketing of shore consignees of the ship's cargo should an attempt be made at delivery. The union contended that substandard wages and conditions on foreign flag vessels posed a threat to the livelihood of American seamen.

The Court there held that the controversy was within the Norris-LaGuardia definition, 29 U.S.C. § 113 (c), in that the controversy was one, "concerning terms or conditions of employment," and involved "persons who are engaged in the same industry, craft, trade or occupation." It was immaterial that the union, the ship, *and the consignees* (362 U.S. at 370) did not "stand in the proximate relation of employer and employee," 29 U.S.C. § 113 (c); the case grew out of a labor dispute within the meaning of Norris-LaGuardia.

This inclusion by the Court of the consignees as "persons" and disputants within the meaning of the Act, clearly supports the conclusion of the Court of Appeals below that the present case is substantially similar to, and probably controlled by, *Marine Cooks & Stewards*. The distinction which petitioners seek to draw between that case and the present,[23] (Petitioners' Brief, p. 44) that is, that the union did have a dispute with the vessel concerning the "terms or conditions of employment" on the vessel, substantially undercuts petitioners' plea that they are not disputants as they have no dispute with their own employees, for the Court there made clear that, "There was no labor dispute between the ship's employees and the ship." 362 U.S. at 367.

---

[23] In addition to ignoring the presence of the consignees.

Petitioners' facile argument that they are not "* * * person[s] participating or interested in a labor dispute * * *" as defined in Section 13(b) of the Act, 29 U.S.C. § 113(b), must fail when examined in this light.

Nor does *Columbia River Packers Association* v. *Hinton*, 315 U.S. 143 (1941), cited by petitioners, lend any substance to petitioners' argument in regard to their "non-disputant" status, for there "* * * the controversy [was] altogether between fish sellers and fish buyers. The sellers are not employees of the petitioners or of any other employer nor do they seek to be. On the contrary their desire is to continue to operate as independent businessmen." 315 U.S. at 147.

In this dispute, however, it is patently evident that the employer-employee relationship of the picketing employees to FEC, and the relief which they seek from respondents through their employees, is the matrix of the controversy. As stated by the Court of Appeals for the Fifth Circuit in connection with the litigation engendered by picketing at FEC's southern interchange terminus:

> "* * * it is clear that this case involves or grows out of the labor dispute at FEC and that the Port Authority employees are persons interested in that dispute. The Port Authority employees refused to service the FEC interchange track solely because of the strike and picketing at FEC. This litigation would never have arisen were it not for the labor dispute at FEC. The Authority's employees are interested in the dispute in that they are members of the same trade or industry as the striking FEC workers, see 29 U.S.C.A. § 113 (b), and desire to make common cause with them by honoring their lawful picket line." *Brother-*

hood of Locomotive Firemen and Enginemen v. *Florida East Coast Ry. Co.*, 346 F.2d 673, at 675 (1965).

A number of cases in the lower federal courts have held that the Norris-LaGuardia Act applies in situations like those here involved, where the employees of one common carrier appeal to employees of a connecting carrier not to make deliveries to, or take deliveries from, their struck employer. These cases involve both "common situs" picketing at a jointly used terminal[24] and picketing at interchange points used only by the two carriers involved.

The Court of Appeals for the Eighth Circuit was faced with a case factually similar to the case at bar in *Amalgamated Assn. of Street, Electric Ry. & Motor Coach Employees* v. *Dixie Motor Coach Corp.*, 170 F.2d 902 (8 Cir., 1948). Here the owners of a bus terminal sought an injunction against employees of Southern Bus Lines, who were picketing the terminal as a place at which Southern was carrying on its business, in an effort to publicize the dispute and cause Southern's operations to cease. The District Court granted an injunction which was reversed on appeal, the Eighth Circuit holding:

> "The assertion by defendants of a right and intention to publicize their grievances against Southern by peaceful picketing and plaintiff's denial of such right and institution of court action to prevent execution of the intention present a case involving and growing out of a labor dispute in all essentials the same as that upon which the court made its declarations of the law in the Wag-

[24] Here, of course, the terminal is not only jointly used, but jointly owned and controlled, by the struck carrier.

shal case. The brevity of expressions of the Supreme Court to the effect that a case growing out of such boycotting for the labor organization purposes here shown, and plaintiff's resistance to it, is one that grows out of a 'traditional source' of labor disputes within the scope of the Norris-LaGuardia Act implies only that the court considered the law on the question settled beyond need for amplification.

* * * this case to enjoin a secondary boycott threatened in a real and substantial labor dispute over wages and working conditions, grows out of a labor dispute within the scope of the Norris-LaGuardia Act and was and remains subject to the limitations on the court's powers specified in that Act, and . . . the Taft-Hartley Act of 1947 has not changed the law so as to permit issuance of the injunction here granted at the suit of a private party." 170 F.2d at 902, 905.

Another case in point is *Lee Way Motor Freight* v. *Keystone Freight Lines, Inc.,* 126 F.2d 931 (10 Cir., 1942), cert. den., 317 U.S. 645. In that case a common carrier operating pursuant to a certificate of necessity issued by the Interstate Commerce Commission had customarily interchanged freight with connecting common carriers. Like FEC, however, the plaintiff common carrier was engaged in a labor dispute with its own employees. Due to the picket lines put up by plaintiff carrier's striking employees, the employees of the connecting carriers refused to interchange freight with the struck carrier and the normal busines relationship between the struck carrier and the connecting carriers was interrupted. The struck carrier then sued to compel the connecting carriers to continue to interchange freight with it as required by the Interstate Commerce Act, Part II, 49 U.S.C. 301-327. It

was squarely held that an injunction should not be issued because a labor dispute was involved within the meaning of the Norris-LaGuardia Act, 29 U.S.C. 101, *et seq.*

The Court of Appeals for the Fifth Circuit expressly approved the *Lee Way* case in *East Texas Fr. L.* v. *International Brotherhood,* 163 F.2d 10 (5 Cir., 1947), a similar suit by one common carrier against connecting carriers and a union seeking to organize its employees. It was charged that the union's concerted activity, described by the Court as a "boycott," 163 F. 2d at 11, had caused the defendant carriers to refuse "to interline freight with plaintiff" in violation of their duty under acts of Congress. The trial judge there denied the application for injunctive relief, and the Court of Appeals affirmed, citing *Lee Way* as a case directly in point and stating "* * * we are in no doubt that it was well decided." 163 F.2d at 12.

Both the *Lee Way* and the *East Texas Freight Lines* decisions have been cited with approval by this Court in *Order of Railroad Telegraphers* v. *Chicago and N.W.R. Co.,* 362 U.S. 330, 339 (n. 15) (1960). See also *Southeastern Motor Lines* v. *Hoover Truck Co.,* 34 F. Supp. 390 (M. D. Tenn., 1940), cited with approval by the Interstate Commerce Commission in *Montgomery Ward & Co.* v. *Consolidated Freightways,* 42 I.C.C. 225, 235 (1943).

The *Lee Way* and *East Texas Freight Lines* cases, of course, involve suits brought directly by the struck carrier itself, as distinguished from this suit and the *Dixie Motor Coach Corp.* case where the terminal or connecting carrier brought suit. But surely this difference can not be controlling, for Section 13(b), 29 U.S.C.

113(b), of Norris-LaGuardia expressly states that a person shall be deemed a participant and interested in a labor dispute if relief is sought against him (as it clearly is when picketing—at a place where the struck employer is regularly doing business—is addressed to a person providing essential day-to-day services or deliveries to the struck employer) and such person is engaged in the same industry. To hold that all persons affected by picketing of a struck employer can enjoin the picketing, whereas the employer can not, would be to ignore the phrase in Section 13(c) providing that the disputants need not stand in the proximate relation of employer and employee. Such an interpretation would frustrate the very purpose of Norris-LaGuardia to expand the narrow scope given to the Clayton Act in the 1920's.

Respondents submit, therefore, that under any view of their activity, primary or secondary, the Norris-LaGuardia Act is squarely applicable, in terms, to this dispute. (Respondents in no way concede, however, that the picketing here involved would be held to be prohibited secondary activity, even under the provisions of the National Labor Relations Act. 29 U.S.C. § 108(b)(4); see pp. 63-68 of this brief, *infra.*)

II. PETITIONERS' SUGGESTED "ACCOMMODATION" OF THE NORRIS-LAGUARDIA ACT TO THE RAILWAY LABOR ACT IS WITHOUT FOUNDATION IN THE LANGUAGE OR SPIRIT OF EITHER STATUTE

This Court has in the past authorized injunctions in cases arising under the Railway Labor Act, to vindicate the processes of the Act by preserving the jurisdiction of its special agencies, *Brotherhood of R. R. Trainmen* v. *Chicago R. & I. R. Co.*, 353 U.S. 30 (1957), and to enforce duties made mandatory under the pro-

visions of that act, *Virginian R. Co.* v. *System Federation,* 300 U.S. 515 (1937); *Graham* v. *Brotherhood of Locomotive Firemen,* 338 U.S. 232 (1949); *Brotherhood of Railroad Trainmen* v. *Howard,* 343 U.S. 768 (1952).

What this Court has never done, yet what petitioners urge upon it, is an "accommodation" of the Norris-LaGuardia Act to nothing in the Railway Labor Act, to preserve the jurisdiction of no agency, to compel the performance of no mandatory statutory duty.[25] Petitioners point to no provision in the Railway Labor Act which they purport to require "accommodation," save the general language that the Act seeks to promote "* * * prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions," and "to avoid, any interruption to commence * * *". 45 U.S.C. § 2. These references to the purposes of the Railway Labor Act give no aid to petitioners. It is without doubt the purpose of the Railway Labor Act to avoid interruptions to commerce through procedures designed to promote settlement of disputes. But that Act clearly contemplates that there may be such interruptions when the Act's procedures have been exhausted.[26] Here, these procedures have been exhausted. Neither petitioners nor FEC have any matter pending before any Railway Labor Act agency whose jurisdiction requires protection.

In the Railway Labor Act, Congress did not purport to create processes and machinery whereby all disputes

---

[25] Petitioners have taken the precaution of printing the entire Railway Labor Act in the Appendix to their Brief (Petitioner's Brief, pp. 1a-38a). It must be assumed that the reason for such fulsomeness is an inability to point to any particular provision requiring "accommodation."

[26] *Brotherhood of Locomotive Engineers* v. *Baltimore & Ohio R. Co.,* 372 U.S. 284 (1963).

would be settled prior to economic conflict. Save for the area in which compulsory arbitration has been legislated, see *Brotherhood of Railroad Trainmen* v. *Chicago R. & I.R. Co.*, 353 U.S. 30 (1957); *Brotherhood of Locomotive Engineers* v. *Louisville and N.R. Co.*, 373 U.S. 33 (1963); *Gunther* v. *San Diego and Arizona E. Ry.*, 382 U.S. 257 (1965); where parties have progressed a major dispute through the statutory machinery, self-help and settlement through the interplay of economic force is the legislated scheme. *Brotherhood of Locomotive Engineers* v. *B. & O.R. Co.*, 372 U.S. 284 (1963).

Indeed, this Court has recognized that the Railway Labor Act preserves the right to strike, and that when strikes do occur in the railroad industry they "will typically affect a region or the entire nation." *California* v. *Taylor*, 353 U.S. 553, 566-567 (1957); see also dissenting opinion, Brennan, J., *Sinclair Refining Company* v. *Atkinson*, 370 U.S. 195, 225 (1962) ("But there is no general federal anti-strike policy; * * * and if the employer cannot be compelled to arbitrate, restraining the strike would cut deep into the core of Norris-LaGuardia.") Also, the methods used to strike, if peaceful and non-violent, are exclusively a question of federal law, and unless outlawed by Congress, are available as legitimate economic weapons. See *N.L.R.B.* v. *Ins. Agents Int. Union*, 361 U.S. 477, 496 (1960).

There is no intimation in the years since passage of the Norris-LaGuardia Act, that that statute was not meant to apply, in terms, to the conduct of parties who have complied fully with the processes of the Railway Labor Act, who are not in violation of any mandatory statutory duty, and who are exercising their right of self-help.

The Norris-LaGuardia Act has repeatedly and squarely been held by this Court to be applicable in the context of a major dispute under the Railway Labor Act. *Order of Railroad Telegraphers* v. *Chicago & N. W. R. Co.,* 362 U.S. 330 (1960); *Brotherhood of Railroad Trainmen* v. *Toledo, P. & W. R. Co.,* 321 U.S. 50 (1944). Here, this case grows out of a major dispute between FEC and the BRT. The refusal of petitioners' employees to cross the BRT picket lines is a part of that major dispute. See *Brotherhood of Locomotive Firemen & Enginemen* v. *Florida East Coast Ry. Co.* (5 Cir., 1965), 346 F.2d 673, 676. The sole cause of the petitioners' employees refusal to service the interchange facilities used by the FEC is the major dispute between FEC and BRT which FEC has precipitated by refusing voluntary arbitration when BRT has accepted that way to settle the controversy (R. 142). The petitioners' employees are persons interested and affected by this major dispute as members of the same industry.

In these significant respects this case differs from the decisions involved in *Lakefront Dock & R.T. Co.* v. *International Longshoremen's Ass'n,* 333 F. 2d 549 (6 Cir., 1962), and *Chicago & I.M.R. Co.* v. *Brotherhood of Railroad Trainmen,* 315 F.2d 771 (7 Cir., 1963), vacated as moot, 375 U.S. 18 (1963). In neither of these cases was there a major dispute under the Railway Labor Act involved which had been processed through all the mandatory procedures of the Act. In neither case was the union doing the picketing a railroad union representing railroad employees in a major dispute under the Act. In both cases the labor dispute involved cut across industry lines, i.e., the primary dispute was in the maritime industry and affected the

railroad industry only secondarily. Both suits were brought by railroads against their own employees, not to enjoin the picketing, but to compel them to dishonor the picket lines—a type of relief which the petitioners here expressly eschewed (R. 101-102). Regardless of whether such decisions were decided correctly or not, they do not squarely conflict with the decision of the Court of Appeals in this case or with the decisions cited earlier in *Amalgamated Assn. of Street, Electric Ry. & Motor Coach Employees* v. *Dixie Motor Coach Corp.*, supra; *Lee Way Motor Freight* v. *Keystone Freight Lines, Inc.*, supra; and *East Texas Fr. L.* v. *International Brotherhood*, supra.

Likewise, in *Brotherhood of Railroad Trainmen* v. *New York Cent. R. Co.*, 246 F.2d 114 (6 Cir., 1957), cert. den., 355 U.S. 877 (1957), the injunction suit was between a railroad and its own employees. The essential question was whether the dispute involved a lawfully bargainable issue. That court's holding that it did not, and that therefore the case did not involve a "labor dispute" under the Norris-LaGuardia Act, necessarily involved a determination of the legality of the strike itself under the Railway Labor Act, an issue never raised or involved in this case.[27] This Court's

---

[27] Compare in regard to that issue of legality of the strike itself, however, the decision of the Court of Appeals for the Fifth Circuit in *Eastern Air Lines, Inc.* v. *Flight Engineers Internat'l Ass'n*, 340 F.2d 104 (5 Cir., 1965), holding that there is nothing in the Railway Labor Act which itself prohibits self-help in a dispute which can not be fitted into the "major-minor" categories outlined by this Court in *Elgin, J.&E.R.Co.* v. *Burley*, 325 U.S. 711, 722-728 (1945). The Court of Appeals there said (340 F.2d at 106):

> "• • • We think this contention is unsound since there is nothing in the [Railway Labor] Act itself that prohibits self-help except in the two circumstances which have been set out above. Thus, it cannot be said that a strike which is not

later decision in *Order of Railroad Telegraphers* v. *Chicago & N.W.R. Co.*, 362 U.S. 330 (1960), expressly referred to the *New York Central* case as involving a similar question to the one there involved, 362 U.S. at 334-335 (n. 4), and resolved that question contrary to the result reached by the Court of Appeals for the Sixth Circuit. The *New York Central* case can not be regarded as authority for accommodating the Norris-LaGuardia Act so as not to apply its terms in the context of a lawful strike arising out of a major dispute processed through the Act's procedures.

Surely petitioners' argument in this case represents the boldest plea ever to be suggested to this Court for "* * * judicial obliteration of [the Norris-LaGuardia] Act under the soft euphemism of 'accommodation' * * *" *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, 209 (1962).

What, in effect, is asserted by petitioners is simply that this Court should declare as a matter of national policy that strikes in the railroad industry are so harmful to the public that railway labor should be prohibited from interferring in any way with a struck carrier's interchange with connecting carriers. This is not the balance of economic power that Congress legislated, and is plainly an attack on this Court's holding in *Order of Railroad Telegraphers* v. *Chicago & N.W. R. Co.*, supra, 362 U.S. at 339, that Norris-LaGuardia is not to be accommodated to other non-labor statutes, e.g., the Interstate Commerce Act.

---

in support of the position being maintained by the striking employees in either a minor or major dispute, as the case may be, is prohibited by the terms of the Act."

The two circumstances referred to are a strike over a minor dispute or a strike over a major dispute that has not been processed through the procedures of the Act. Neither is here involved.

As this Court further said in *Sinclair Refining,* Congress did not intend "* * * to confer a power upon the courts to accommodate that Act [Norris-LaGuardia] out of existence" 370 U.S. at 209. Here, as in *Sinclair,* petitioners are seeking an injunction against the very types of concerted action specifically described in Norris-LaGuardia. See Section 4, 29 U.S.C. 104. Unlike *Sinclair,* however, there is not even the balm of arbitration offered here in lieu of the concerted action sought to be enjoined.

The gist of petitioners' logic in their suggested "accommodation" argument is that the term "labor dispute" in Norris-LaGuardia should be limited to the definitions of "major" or "minor" disputes under the Railway Labor Act. This dispute, they say, is neither. Therefore Norris-LaGuardia does not apply. This approach simply ignores the plain fact that there *is* a major dispute between BRT and FEC, that FEC does operate daily and regularly at all places picketed by the BRT, and that respondents have not sought to interfere with petitioners' operations except insofar as they involve the FEC. The evidence concerning the Coast Line's Dennis Street crossing here becomes highly significant (see petitioners' brief, pp. 8-10), and the fact that respondents did *not* picket the crossing there as petitioners claim (see pp. 20-21 of this brief, supra) demonstrates the obvious fact that the picketing here arises directly out of the FEC-BRT major dispute.

But even if, by use of arbitrary labels, the dispute here is called neither "major" nor "minor", it does not follow that it is not a labor dispute under both Norris-LaGuardia and the Railway Labor Act. The definition of "labor dispute" Congress used in Norris-

LaGuardia is simply not the same definition attributed to Congress with respect to a "major" and "minor" dispute in the Railway Labor Act. To say that "it ought to be" is like saying "there ought to be a law against it." See *N.L.R.B.* v. *Ins. Agents Int. Union,* supra, 361 U.S. at 496 (n. 25). Moreover, Section 5 of the Railway Labor Act expressly provides as follows:

> "Sec. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:
>
> "(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.
>
> "(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.
>
> "The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.
>
> "* * *
>
> "* * *."
>
> (45 U.S.C. 155, First.)

Obviously category (b) contemplates that there can be "labor disputes" under the Railway Labor Act that are not either "major" or "minor" disputes as those terms are defined in the Act. While National Mediation Board jurisdiction in such cases is not mandatory, it certainly is not out-lawed. As respondents earlier suggested in this case in June, there are alternatives open to petitioners under the Railway Labor Act (e.g.,

Section 10, 45 U.S.C. 160), and otherwise,[28] besides involving the federal courts in the business of issuing labor injunctions.

The colloquy between Congressmen Lankford and LaGuardia cited by petitioners as the legislative history in support of their "accommodation" (pages 26-27, Petitioners' Brief) would, standing alone, seem to indicate that Norris-LaGuardia does not apply to Railway Labor Act controversies at all. Obviously, this is not the case. *Brotherhood of Railroad Trainmen* v. *Toledo, P. and W. R. Co., supra; Order of Railroad Telegraphers* v. *Chicago and N. W. R. Co., supra.* The Congress which passed the Norris-LaGuardia Act was acutely aware of its applicability to railway labor controversies, to the extent that an amendment to the Act expressely exempting railroads and public utilities from the Act's protections was debated and soundly defeated. See 75 Cong. Rec. 5503-5505 (1932).

Railway labor disputes were mentioned repeatedly in Congressional debate, with particular emphasis upon the abuses by the federal courts of their injunctive powers during the shopcraft strike of 1922. E.g., 75 Cong. Rec. 4618-4620 (1932).

There is no intimation whatever, that Congress intended that its definition of what constitutes a "labor dispute" for the purposes of the Norris-LaGuardia Act was to be radically limited in the context of a

---

[28] Respondents discussion in the briefs filed with this Court in June of possible means available to petitioners under the Interstate Commerce Act to relieve the impact of the FEC-BRT major dispute on them has been seized upon by petitioners as showing that the purpose of the BRT picketing is to force petitioners to embargo the FEC. Respectfully, respondents suggest that this is an obvious case of setting up and knocking down a straw man. Respondents' discussion at that time was directed entirely to the existence vel non of an emergency warranting this Court's granting of extraordinary relief.

railway "labor dispute." Respondents respectfully submit that, in our judgment, petitioners are simply urging the Court to repeal the Norris-LaGuardia provisions that, "The term 'labor dispute' includes *any controversy concerning terms or conditions of employment • • • regardless of whether or not the disputants stand in the proximate relation of employer and employee,*" 29 U.S.C. 113(c) (emphasis added), and that, "A person shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, • • •." 29 U.S.C. 113(b).

Against the background of the particular dispute here involved, such a repeal by "accommodation" would result, and has resulted to the present, in the right of self-help being virtually unilateral to the carrier.[39] This tampering with the economic balance of power legislated by Congress has resulted in the pro-

[39] Provision in the injunction that picketing is permitted at the employee entrance to the Terminal Company allegedly "reserved" for FEC employees is nothing more than token recognition of the employees' right to self-help. Not only is the gate not used by anybody, but limitation of the BRT's appeal to those who are breaking the strike, with no provision for appeals to the public and to neutral or "allied" employees, not to make deliveries or to provide essential day-to-day services for FEC, amounts, in fact, to a ban on picketing. *See American Federation of Labor* v. *Swing*, 312 U.S. 321, 326 (1941), where this Court held:

> "A state cannot exclude working men from peaceful exercise of the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become commonplace. • • • The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ."

longation and exacerbation of the major labor dispute here involved. It has relieved the struck carrier of legitimate pressure to the extent that the FEC's duty to exert every reasonable effort to settle all disputes in order to avoid interruption to "the operation of *any* carrier growing out of any dispute between *the* carrier and the employees thereof," Section 2, First, Railway Labor Act, 45 U.S.C. 152, First (emphasis added), has become an empty formality.[30]

III. THE DISTRICT COURT LACKED JURISDICTION BECAUSE THE CONDUCT ENJOINED IS ARGUABLY SUBJECT TO THE EXCLUSIVE PRIMARY JURISDICTION OF THE NATIONAL LABOR RELATIONS BOARD

An additional, wholly separate ground upon which to sustain the decision of the Court of Appeals below that the District Court lacked jurisdiction to enter the labor injunction here involved, is the applicability of the "preemption" doctrine as enunciated by this Court, to the facts of this case.[31]

---

[30] As Secretary of Labor Wirtz has advised the Chairman of the Florida Railroad and Public Utilities Commission by letter of April 11, 1963, "It is apparent that it is Mr. Ball, and he alone, who controls the ultimate decision making responsibility for the carrier and his present reluctance to accept our recommendation for arbitration or have top level discussions here in Washington presents a serious hinderance to an early resolution of the dispute."

[31] This point is also involved in *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Company*, No. 244, O.T. 1966, involving a companion suit to this case wherein the petitioner, Jacksonville Terminal Company after the Court of Appeals ruled in this case, sought and obtained a state court injunction against the picketing here involved. Respondents sought to remove the state court proceedings to the District Court below, but the Terminal Company asserted to the District Court that it was "axiomatic" that the Norris-LaGuardia Act divested the District Court of jurisdiction, and the District Court remanded the case to the state court where a preliminary injunction against the picketing was rendered May 30, 1966, and a final injunction, which is being appealed, on July 29, 1966.

At least since *Garner* v. *Teamsters Union*, 346 U.S. 485 (1953), and clearly since *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959), this Court has consistently and repeatedly ruled that state and federal courts lack jurisdiction to adjudicate the legality of peaceful, orderly picketing which is "arguably subject" to the protections or prohibitions of the Labor Management Relations Act, 29 U.S.C. § 141 et seq. The Courts in such cases lack even the jurisdiction to decide the jurisdictional question prior to an NLRB ruling. *Marine Eng. Ben. Ass'n* v. *Interlake Steamship Co.*, 370 U.S. 173 (1962); *Hanna Mining Co.* v. *Marine Eng. Ben. Ass'n*, — U.S. —, 86 S.Ct. 327 (1965).

The fundamental basis underlying this doctrine of preemption is that Congress has vested an administrative agency, the National Labor Relations Board (NLRB), which presumably enjoys some expertise in the field, with the exclusive, primary power to make the determination of whether a matter does fall within its area of special competency or not. *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 244-245 (1959).

> "When an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board * * *." *Id.* at 245.

A situation such as the present seldom arises in the federal system for the Labor Management Relations Act (LMRA) makes perfectly clear that an injunction against secondary activity allegedly in violation of Section 8(b)(4), 29 U.S.C. § 158(b)(4), may be obtained only at the request of the NLRB. 29 U.S.C.

§ 160(j), (L). Where questions arise as to the jurisdiction of the Board, employers are far more prone to seek their labor injunctions in the state courts rather than to face the jurisdictional bar of the Norris-LaGuardia Act in a federal court.

Nevertheless, by creating the statutory machinery of the LMRA, Congress divested *all* courts, both state and federal, of their function to serve as primary tribunals to adjudicate the issue of jurisdiction itself. The reason for such withdrawal of jurisdiction is obvious. If the multitude of trial courts, state and federal, are simultaneously deciding jurisdictional issues in labor cases along with the NLRB its role as a specialized agency shaping the initial course of administration of federal labor law would be literally submerged and destroyed. See *Capital Service* v. *N.L.R.B.*, 347 U.S. 501 (1954); compare *Amalgamated Clothing Workers* v. *Richman Brothers*, 348 U.S. 511 (1955).

That the conduct which the District Court below enjoined is "arguably subject" to the NLRB's jurisdiction is easily illustrated. Respondents are accused of engaging in an illegal secondary (but peaceful) boycott. The NLRB clearly has "arguable" jurisdiction over this type of conduct [§ 8(b)(4), 29 U.S.C. 158(b)(4)], unless some other circumstance present in the case makes it clear beyond doubt that it does not.

Petitioners contend that simply because the definitional sections of the LMRA exclude employers subject to the Railway Labor Act and their employees from the definitions of "employer" and "employee", §§ 2(2) and 2(3), 29 U.S.C. §§ 152(2), (3), it is not arguable that respondents' conduct, albeit allegedly

an illegal secondary boycott, is subject to regulation under the LMRA. See Petitioners' Brief, at pp. 53-55.

We could well wish that petitioners' argument in this respect were well founded. Unfortunately, we are confronted by the decision in the recent case of *International Brotherhood of Electrical Workers, AFL-CIO* v. *NLRB*, 350 F. 2d 791 (D.C. Cir. 1965), cert. denied, March 21, 1966, 86 S.Ct. 1196, which effectively foreclosed the right to picket at another of FEC's important terminals. In that case railroad unions representing striking employees of the Florida East Coast Railway were found to be covered by NLRB jurisdiction despite their vigorous protest that the LMRA had no application whatsoever to their conduct in representing railroad employees. Certain of the unions there involved represented only railroad employees in their activities throughout the nation; others represented both railroad employees and non-railroad employees.[32] The unions contended without success that they should be treated as Railway Labor Act organizations when representing railroad employees and as LMRA labor organizations when representing non-railroad employees. Cf. *Pan American World Airways, Inc.* v. *United Bro. of Carpenters & Joiners*, 324 F. 2d 217 (9th Cir. 1963), holding that the status of an airline company as an employer under the Railway Labor Act or the LMRA

[32] Insofar as the status of two of respondents is concerned, see *Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Railroad Trainmen and Phelps Dodge Corp.*, 130 NLRB No. 94, 47 LRRM 1461 (1961). In the companion state court suit referred to in footnote #31, supra, the Terminal Company stipulated that while the membership of respondents is overwhelmingly composed of employees under the Railway Labor Act (i.e., over 93% in each instance), each respondent does also represent employees who are not covered by the Railway Labor Act. For example, the BRT represents many bus company employees.

depends upon what functions the employer is actually doing in the specific instance involved. See also *Local Union No. 25* v. *New York, New Haven and H. R. Co.*, 350 U.S. 155 (1956); *United Steelworkers* v. *NLRB*, 376 U.S. 492, 500-501 (1964).

It can be seen from these cases that the question of coverage of the LMRA, when it turns upon the status of either the employer or of the labor organization involved, can be an intricate and difficult one by any standards. Therefore, this Court has squarely held that, where the question of LMRA coverage does turn on status, a state or federal court is preempted of jurisdiction to make that determination, and exclusive primary jurisdiction to make the initial decision on the question rests with the administrative agency, the NLRB. *Marine Eng. Ben. Ass'n* v. *Interlake Steamship Co.*, 370 U.S. 173 (1962).

Respondents respectfully submit that the foregoing cases clearly show that the question of NLRB jurisdiction over the conduct here involved is an "arguable" one, and that therefore the District Court below lacked jurisdiction.[33]

---

[33] While it should again be emphasized that respondents' position on the merits of LMRA jurisdiction has been and is that the Railway Labor Act, the Clayton Act, and the Norris-LaGuardia Act govern the legality vel non of their conduct to the exclusion of both state law and the LMRA, the fact that respondents take this position does not serve either to grant or divest the NLRB of jurisdiction or to make the matter of its jurisdiction any more or less "arguable." Likewise, the fact that petitioners do not here and now choose to invoke or assert NLRB jurisdiction does not make the matter less "arguable." Jurisdiction of that agency is not determined by the desires of the parties.

IV. RESPONDENTS' CONDUCT HEREIN IS OUTLAWED BY NO FEDERAL STATUTE AND IS EXPRESSLY LEGALIZED BY SECTION 20 OF THE CLAYTON ACT

A. Clayton Act Applicable to Respondents' Activity

In their discussion regarding the legality of respondents' conduct, petitioners choose to ignore the provisions of Sections 6 and 20 of the Clayton Act, *supra*. Rather they seek to have this Court fill a purported "statutory gap" relating to rail labor controversies, with judicial regulation, presumably coextensive with Congressional action in Section 8 (b)(4) of the Labor Management Relations Act.[35] Disregarding the patently legislative nature of such "gap" filling, in fact no such "gap" exists.

The protections afforded by the Clayton Act to "* * * the immunized trade union activities as redefined by the later [Norris-LaGuardia] Act * * *", *United States* v. *Hutcheson, supra*, 312 U.S. at 236, are fully applicable to respondents' conduct herein viewed from any standpoint, i.e., primary or secondary. (See discussion of legality of secondary activity, *supra* at pp. 36-43.) The Clayton Act has never been repealed (save for a period of judicial limitation) and remains, where applicable, as a strong *and legislative* expression of the "national labor policy".

---

[35] Of course, under the all-inclusive language of § 8(b)(4) of the LMRA, which this Court has noted literally bans "most strikes historically considered to be lawful, so-called primary activity" (*Electrical Workers* v. *NLRB*, 366 U.S. 667, 672 (1961)), fine distinctions have been spun involving the tenuous difference between mere "hope" and "intent". 366 U.S. at 673-674. The constitutionality of § 8(b)(4), if literally applied, would (we submit) present serious questions under the First Amendment. Defining the line between "hopes to achieve the forbidden objectives", conceded to be universal, and an intent to achieve it, may be the only alternative to facing these difficult constitutional questions.

It can hardly be accepted that a "huge gap" requiring some form of judicial regulation exists, where one of the great labor statutes of this century is fully applicable to protect respondents' conduct, under any view, from the taint of being a violation of any law of the United States.

B. Respondents' Activity Not Prohibited Even Under NLRB Standards

One of petitioners' assertions as to the illegality of respondents' picketing is that the picketing is so clearly secondary in nature as to offend "general federal labor policy." The idea of "secondary" conduct, without reference to a particular statutory enactment, however, is so vague that even petitioners shy away from any definition of the term. (Pet. Br. p. 42, fn. 1) Significantly, Congress has never used the term in any of the many labor laws it has passed.

The railroad yards which were picketed, are yards where FEC trains and crews operate. In these yards over 31% of the freight handled is FEC freight. It is the place where employees of connecting carriers come in contact with FEC operations, where they deliver cars to FEC to be removed by FEC engines and crews, where they maintain trackage over which FEC operates and throw switches and give signals for FEC train movements, and where they render various other direct services for FEC. The picketing of these FEC operations and the appeal by respondents to their fellow railroad workers not to render services to FEC was made at the closest public locations to these operations.

To call this picketing "secondary" under any definition would be simply to say that the picketing has severe secondary consequences to others. But all

picketing has "secondary" aspects. See *NLRB* v. *International Rice Mill Co.*, 341 U.S. 665 (1951). To make the policy judgment that the picketing should be prohibited would be a legislative judgment that would by the nature of railroad operations insulate from picketing the most economically important part of its operations by which it receives freight from other carriers, because of the interruption to the operations of the connecting carriers.

Petitioners say that the FEC operations on the Jacksonville Terminal premises are "a very small—and severable—tail [of] a very large dog." Regardless of the fact that the petitioners' hypothetical dog is of a most remarkable breed whose tail is 30% of its total bulk, the question is the severability of FEC operations from the other operations carried on at the Terminal. There is some degree of severability and respondents did not picket rail entrances to the Terminal Company premises used by rail movements unrelated to FEC.

But for the injunction issued within hours after the picketing began, further arrangements could have been made to limit the effects of the picketing. For instance, certain tracks could have been designated by the Terminal Company solely for FEC movements and other tracks designated solely for the use of the other carriers. Interchange freight not destined for FEC could have been segregated and brought on to the Terminal Company premises in separate rail movements. The Terminal Company could have permitted the pickets to come onto its premises to picket the actual places within the Terminal Company premises where FEC interchange and other FEC work is performed.

Petitioners' argument assumes that it is they, and they alone, who are picketed. Just as forcefully respondents could argue that it is the FEC, and the FEC alone, that is picketed. We submit that the reality is that it is the physical business connection between petitioners and FEC which is being picketed. In short this is simply a "common situs" or mobile situs situation. As to such a problem, which admittedly can be difficult, Congress in its wisdom has provided one special rule even within the confines of the LMRA for the garment industry (see Section 8(e), LMRA, 29 U.S.C. 158(e)) and is currently debating a proposal to make special rules for the construction industry. Is this Court equipped to make such determinations? The variety of solutions available is wide. All common situs picketing can be banned. All such picketing can be protected. Ownership of the common situs can be made the determinative factor, or control. The nature of the duties performed by the secondary employees affected can be made the crucial point. What is a good rule for one industry may not be practical or realistic for another. All that respondents contend is that consideration and determination of all these factors and alternatives is truly legislative in character and ought to be left to Congress. And Congress has not, for the railroad industry, seen fit to outlaw secondary activity of any sort, but rather has legalized such activity by Section 20 of the Clayton Act and the Norris-LaGuardia Act.

Although it seems quite clear that Congress intended to regulate railway labor in a different manner from its regulation of other industry, respondents believe that their picketing here involved would constitute protected, primary picketing under the National Labor Relations Act.

A recent decision of this Court squarely in point is *United Steelworkers* v. *N.L.R.B.* (1964), 376 U.S. 492, 84 S.Ct. 899. In that case the Steelworkers had struck the Carrier Company and had picketed a railroad spur leading to the Carrier Company plant. The picketing was on railroad property, was an appeal to the railroad crews, and was done for the purpose of inducing the railroad to cease providing rail service to the Carrier Company for the duration of the strike. 376 U.S. at 496. This picketing was held to be primary and legal picketing under the N.L.R.A.

The Court of Appeals there had held the picketing to be secondary and illegal because it was an appeal to neutrals not to do business with the struck employer. This Court held that primary picketing is *not* limited to an appeal to employees of the struck employer but also includes an appeal to those neutral employees making deliveries to the struck employer (or receiving deliveries from the struck employer) or performing services which aid the struck employer's day-to-day operations.

This Court also held that picketing upon the premises of the neutral was permissible if "there was no other place where the union could have brought home to the railroad workers servicing Carrier its dispute with Carrier." 376 U.S. at 499.

If picketing of rail deliveries to a struck plant is primary activity, *a fortiori* the picketing of rail deliveries by one railroad to another is primary activity in a railroad labor major dispute.

In addition there has developed under the National abor Relations Act decisions a doctrine often called ie "ally" doctrine. Under this doctrine picketing of ie "ally" itself is primary picketing if the nexus be- veen the ally and the primary employer is sufficiently ose. Perhaps the first case which applied these prin- ples was *Douds* v. *Metropolitan Federation of Archi- cts,* 75 F. Supp. 672 (D.C., S.D., N.Y., 1948). There ie relationship between the primary employer and the ly antedated the strike. They were separate busi- ess entities. The Court held that because the ally as doing for the primary employer the same type of ork as was normally performed by the primary em- loyer, it was subject to being picketed. The fact iat the particular relationship was common in that idustry was held to be of no consequence. Most sig- ificantly, Senator Robert Taft stated that this de- sion was a correct interpretation of the Taft-Hartley mendments to the National Labor Relations Act. See 95 Congressional Record 8709, 1949).

Surely the Jacksonville Terminal Company which is vned and controlled in part by FEC, which is an tegral part of the FEC system, which is a place here FEC trains and crews daily operate, and which doing "struck work" is such an "ally". Other pplicable decisions under the ally doctrine are: .L.R.B. v. *Electrical Workers, CIO,* 228 F. 2d 553 C.A. 2, 1955) cert. den. 351 U.S. 962 (1956); *N.L.- .B.* v. *Local 459, Electrical Workers,* 289 F. 2d 62 C.A. 2, 1961); *Masters, Mates & Pilots and Ingram arge Co.,* 136 N.L.R.B. No. 112, 49 L.R.R.M. 1943 1962).

C. Respondents' Activity Not Violative of Interstate Commerce Act

The petitioners' allegation that respondents' conduct is unlawful under the Interstate Commerce Act is based upon several erroneous assumptions: (1) that the duty of one carrier to interchange with another is virtually absolute, (2) that the FEC is entitled to enforce the interchange provisions of the Interstate Commerce Act against petitioners by mandatory injunction, and (3) that respondents' conduct is unprotected for unspecified reasons by the provisions of Sections 6 and 20 of the Clayton Act.

Relying upon the interchange provisions, Sections 1(4) and 3(4) of the Interstate Commerce Act, District Court authority from the last century, and several more recent District Court decisions, petitioners claim that neither a strike nor picketing of a connecting carrier relieves other carriers from the duty of performing interchange and that therefore, respondents' conduct herein, interfering with such interchange, is an unlawful interference with interstate commerce. Petitioners' Brief pp. 60-61.

The Interstate Commerce Commission has taken a different view of the duties of connecting carriers. The Commission, whose interpretation of its own organic statute is entitled to great weight (*United States* v. *American Trucking Ass'ns* (1940), 310 U.S. 534, 549), held in *Montgomery Ward & Co.* v. *Consolidated Freightways, Inc.*, 42 I.C.C. 225 (1943), that the motor carriers there involved had not violated the Interstate Commerce Act by their failure to serve complainant Montgomery Ward, while Ward was being picketed by its striking employees. The Commission

noted that the union striking Ward was the same one representing the motor carriers' employees (42 I.C.C. at 227), and that the carriers' employees refused to cross the picket line at Ward's plant. In this regard the Commission stated:

> "* * * A common carrier's duty to receive and transport therefore is not an absolute one, but is subject to reasonable limitations and conditions. It may refuse to receive property for shipment if transportation on its line or the line of a connecting carrier has become impossible or impracticable because of circumstances beyond its control, as for example, a strike, the strike not being induced or caused by the carrier. *Gage* v. *Arkansas Cent. R. Co.*, (160 Ark. 402) 254 S.W. 665. In that case, the refusal of the defendant carrier to receive a shipment destined to a point on the line of a connecting carrier which had declared an embargo at the destination because of a switchmen's strike at that point was upheld. See also *Galveston, H. & S. Ry. Co.* v. *Karrer*, 109 S.W. 440.
>
> "We find that the defendants' failure to serve the complainant as herein described was proximately caused by a strike at complainant's plant, for which the defendants were not responsible, and that because of the said strike they were physically prevented from serving the complainant, and accordingly their conduct was within the limitations and conditions of the applicable tariff with respect to impractical operation, and not unlawful. The complaints will be dismissed."[36] (emphasis added) 42 I.C.C. at 231, 237.

[36] The same controversy involved before the Interstate Commerce Commission in *Montgomery Ward* v. *Consolidated Freightways, Inc., supra*, came on before a District Court in *Montgomery Ward & Co.* v. *Northern Pacific Term. Co.* (D. Ore. 1953), 128 F. Supp. 475, supplemental decision, 128 F. Supp. 520. In this case, adjudicated some ten years after the events involved, liability was imposed upon common carriers for their failure to serve a struck

Obviously both the approach and holding of the Interstate Commerce Commission in regard to the duties and liabilities of a common carrier faced with strike conditions not of its own making are markedly different from those which the petitioners contend are their duties and liabilities herein.

But regardless of Interstate Commerce Act obligations, the legality of respondents' labor activities is not governed thereby, but rather by federal labor legislation, and in this regard the Clayton Act, which is totally ignored in petitioners' argument on the merits (pp. 50-64), establishes that respondents' interference with interchange between FEC and petitioners is fully justified by respondents' economic self-interest. As stated by Justice Brandeis in dissent in *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443, 448 (1921):

> "Because I have come to the conclusion that both the common law of a state and a statute of the United States declare the right of industrial combatants to push their struggle to the limits of the

---

shipper being picketed by its striking employees. The decision, however, does not directly pass upon the issue here presented, for there Judge Fee significantly found that there was no "unity of interest" between the railroad transportation employees who honored the picket lines and the striking employees of Montgomery Ward (128 F. Supp. at 508, 487, 522). In this latter regard, although noting that the "• • • unions are not present in court to protect themselves" (128 F. Supp. at 506), the District Court ruled that the railroad employees "• • • were neither in the same business, type of business or connected concern with Wards or its employees, nor did they belong to the same or any affiliated union or group of unions with the strikers or the union leaders controlling the strike, the boycott and the picketing." (128 F. Supp. at 487). Accordingly, under these circumstances, Judge Fee rejected the labor dispute between Ward and its employees as a sufficient excuse for the carriers' failure to perform what he described as their "absolute" (128 F. Supp. at 490, 500, 511) obligation.

justification of self-interest, I do not wish to be understood as attaching any constitutional or moral sanction to that right. All rights are derived from the purpose of the society in which they exist; above all rights rises duty to the community. The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. But it is not for judges to determine whether such conditions exist, nor is it their function to set the limits of permissible contest, and to declare the duties which the new situation demands. This is the function of the legislature, which, while limiting individual and group rights of aggression and defense, may substitute processes of justice for the more primitive method of trial by combat."

CONCLUSION

For the reasons stated, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

Of Counsel:

SCHOENE & KRAMER
Washington, D. C.

LESTER P. SCHOENE
1625 K Street, N. W.
Washington, D. C.

RUTLEDGE & MILLEDGE
Miami, Florida

NEAL RUTLEDGE
ALLAN MILLEDGE
RICHARD L. HORN
601 Flagler Federal Bldg.
111 N.E. First Street
Miami, Florida 33132

BECKHAM & MCALILEY
Miami, Florida

THOMAS W. MCALILEY
1010 Concord Bldg.
63 West Flagler Street
Miami, Florida 33130

September, 1966

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 220

ATLANTIC COAST LINE RAILROAD COMPANY, JACKSONVILLE TERMINAL COMPANY, and SEABOARD AIR LINE RAILROAD COMPANY,

Petitioners,

—v.—

BROTHERHOOD OF RAILROAD TRAINMEN, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOWELL KENNEDY, T. C. BOLAND, and J. E. EASON,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

The essential arguments of respondents' brief have been anticipated in our opening brief.[1] However, a marked change of approach in this Court on the part of the respondents certainly requires comment. To the extent that this change of approach involves an attempt to restate the record, we shall call attention to it as such; but this changed approach is indicative in and of itself of the respondents' recognition that adoption of their absolute theory—that the

[1] With the possible exception of the respondents' argument concerning preemption by the Labor Management Relations Act ("LMRA"), to which we make reply in part 2 of this brief.

Norris-LaGuardia Act ousted the District Court of jurisdiction—leaves the sort of statutory gap which is not to be attributed to Congress in enacting the various components of the federal labor legislation. It now appears that respondents are attempting to cast aside this absolute theory that the District Court was powerless to prevent picketing aimed at shutting down all rail movements in or through the Jacksonville Terminal.

1. The respondents' brief labors the point—which we do not deny—that when the "major dispute" provisions of the Railway Labor Act are exhausted the parties to the controversy are free to use self-help against each other. (Res. Br. 48-51) But respondents are unable to find any authority for the proposition that at this point a party to the controversy may use self-help weapons against persons who are not parties to the controversy in order to put economic pressure on them in turn to put economic pressure on the other party to the controversy to resolve it. Nor do respondents cite any authority to the effect that the Norris-LaGuardia Act prevents an innocent bystander to a railway labor controversy, who has not had the benefit of any of the procedures of the Railway Labor Act, from obtaining an injunction against the escalation of the economic warfare against him.—Indeed, the two leading cases of this Court which respondents rely on, dealing with the relationship between the Norris-LaGuardia Act and the situation when the "major dispute" provisions of the Railway Labor Act are exhausted, are both "accommodation" cases. They are cases which harmonize the Norris-LaGuardia Act and the Railway Labor Act by holding that parties to a dispute who have not complied with the Railway Labor Act or who have not exercised the means which that Act provides them for the settlement of disputes may not obtain injunctions.

See *Order of Railroad Telegraphers* v. *Chicago & N.W.R. Co.*, 362 U.S. 330, 339 (1960); *Brotherhood of Railroad Trainmen* v. *Toledo, P.&W.R.Co.*, 321 U.S. 50, 58-61 (1944).[2] Surely they do not bar a party who has not had available to him the Railway Labor Act's procedures from obtaining an injunction.

This failure to find anything in the Railway Labor Act that resembles a provision sanctioning the sudden embroilment of carriers not parties to a railway labor controversy in an escalation of that controversy by a rail union has apparently led respondents—without their acknowledging it—to ignore the plain implications of their basic legal theory. That theory has always been that the Norris-LaGuardia Act completely deprived the District Court of jurisdiction here to enjoin the escalation of the economic warfare against the petitioners; under that theory, no matter how "secondary" the picketing might be thought to be, it was completely immune from injunction by reason of the Norris-LaGuardia Act. But in this Court, for the first time, respondents seek to describe the picketing as something other than it was in fact and in its effect—a complete stoppage of access to the terminal property at every rail entrance, and a stoppage of all through moves through the

[2] We discuss the *Telegraphers* case at p. 29 n. 13 of our opening brief. The *Toledo* case simply holds that voluntary arbitration under the Railway Labor Act is one of the matters which a party must resort to, to demonstrate that he has made "every reasonable effort," as required by § 8 of the Norris-LaGuardia Act, to settle a dispute, before he may obtain an injunction in cases (unlike this one) to which the Norris-LaGuardia Act applies. As Mr. Justice Rutledge's opinion in the *Toledo* case, quoting Representative LaGuardia, makes plain: "If the railroads have complied [with the Railway Labor Act], they would not, as has been suggested, be deprived of any relief which they may have in law or equity." 321 U.S., at 59. By a parity of reasoning, where the benefits of no procedures are available to petitioners under the Railway Labor Act they should not be held to be deprived by the Norris-LaGuardia Act of injunctive relief againsts the attempt by respondents to drag them into a dispute to which they were not a party.

terminal on petitioners' own lines, as well as of all interchanges by petitioners among themselves or with carriers other than the FEC.

Thus, under the respondents' new position, it suddenly becomes of crucial importance whether the pickets, whose presence obviously would have prevented any Coast Line main line trains from entering the terminal property at the Dennis Street crossing,[3] were standing on the tracks or immediately alongside. (Res. Br. 21)[4] In order to make this assertion, of course, it is necessary for the respondents, through a question-begging device,[5] to make sub-

[3] Even if the pickets photographed at R. 182 did not continue walking in the direction in which they are walking in the picture, that is, onto the tracks, it is plain that their presence close to the tracks would cut off the access of main line Coast Line trains into the Jacksonville terminal from the south across the Dennis Street crossing, since the train crews would not cross the line. (R. 62-63, 134) This case does not turn on physical obstruction of tracks by pickets. (See Res. Br. 19)

It is idle to argue, as do the respondents, that the District Court did not accept the contentions of the petitioners as to the effect of the picketing. (Res. Br. 21) The District Court's Finding No. 8 is obviously dependent upon that court's conclusion that the picketing cut off not simply the interchanges but the main line operations of the petitioners. (R. 29)

[4] Indeed, by p. 53 of the respondents' brief, the following assertion is essayed: "The evidence concerning the Coast Line's Dennis Street crossing here becomes highly significant . . . and the fact that the respondents did *not* picket the crossing there as petitioners claim . . . demonstrates the obvious fact that the picketing here arises directly out of the FEC-BRT labor dispute." (Emphasis original)

[5] Respondents contend that, despite the fact that the District Court received it, it was erroneous to receive affidavit evidence in addition to the oral testimony and that, in effect, the affidavits in the record which are contrary to the position of the respondents may not be considered. The only authority cited for this is § 7 of the Norris-LaGuardia Act, 29 U.S.C. § 107. But § 7 does not say that affidavit evidence may not be used to some extent even in a case governed by the Norris-LaGuardia Act. And the short answer is that respondents' argument simply begs the question; for unless the Norris-LaGuardia Act applies to this case, which is one of the basic questions at issue, its § 7 is inapplicable.

tractions in their favor from the whole record and to ignore the fact that, despite their objection to the evidence that the pickets were at the crossing, the District Court admitted it. (R. 98)

Similarly, with respect to the Acorn Street crossing—where a main line of the Seaboard from Savannah, Georgia, crosses across the terminal property in order for trains to reach the West Jacksonville yard of the Seaboard or to continue along the Seaboard's main line track—it is necessary for respondents to indulge in another flight of fancy with the record. (Res. Br. 22) At first there is an effort to deny the plain testimony of Seaboard's witness as to the location of the picketing. (Res. Br. 22; see R. 136) Then respondents state that: "In any event, the Seaboard crossing of Acorn, like the Seaboard crossing at Stockton, is the closest public place to Seaboard's northern access route to YH and Honeymoon Yards where Seaboard and FEC perform their interchange business with each other." (Res. Br. 22) But the fact of the matter is that, as the map at page 9 of our opening brief makes plain, Seaboard train movements crossing Acorn Street are simply main line movements, not interchange movements; there is no access through the terminal property from the Acorn Street crossing to the YH yard and the Honeymoon yard.

By page 64 of the Respondents' Brief, these liberties with the record that have been taken are escalated into a dogmatic misassertion of fact: "[R]espondents did not picket rail entrances to the Terminal Company premises used by rail movements unrelated to FEC." It would be hard to find a grosser or more flagrant misstatement of the record. The fact of the matter is that *every* public crossing entrance to the terminal which the respondents picketed is used by rail

movements unrelated to the FEC. As we pointed out in our opening brief (pp. 4-7), the terminal property stands athwart the main line of the Coast Line into peninsular Florida and a main line of the Seaboard running through Jacksonville. The terminal is also the location for interchanges among the carriers at Jacksonville, the majority of which interchanges do not involve the FEC. (Pet. Br. 5-7, and nn. 9 & 10) All these main line moves and the interchanges between carriers not involving the FEC must enter and leave the terminal property at the appropriate public crossing entrance and exit, either McQuade Street, Stockton Street, Acorn Street, Church Street or Dennis Street. All of these crossings were picketed by respondents.[6] Moreover, the Dennis Street and Acorn Street crossings are used *exclusively* for movements which are not destined for interchange with the FEC. The only rail entry to the terminal which is used exclusively for FEC-related movements is the underpass under Riverside Avenue at the end of the Acosta Bridge over the St. Johns River; and this was the one rail entrance into the terminal which the respondents did not picket. (R. 70-75, 121, 183)

Further symptomatic of the respondents' recognition of the essential weakness of their position is their remarkable statement at page 64 of their brief:

> "But for the injunction issued within hours after the picketing began, further arrangements could have been made to limit the effects of the picketing. For instance, certain tracks could have been designated by the Terminal Company solely for FEC movements

[6] Indeed, it is only as to the Dennis Street crossing, and to a half-hearted extent, the Acorn Street crossing, that respondents now raise some question. (Res. Br. 20-23)

> and other tracks designated solely for the use of the other carriers. Interchange freight not destined for FEC could have been segregated and brought on to the Terminal Company premises in separate rail movements. The Terminal Company could have permitted the pickets to come onto its premises to picket the actual places within the Terminal Company premises where FEC interchange and other FEC work is performed."

The first thing to note about this statement is that it recognizes that the picketing had the immediate effect and the initial intent of blocking all the main line moves through the terminal and all the interchange movements unrelated to the FEC. The second point to note about it is that the assertions it blandly makes about working out "arrangements" are absurd as a matter of practical fact. If there had been no injunction there would have been no incentive at all for the respondents to restrict their picketing in any fashion whatsoever; if, as was the apparent original position of respondents in this matter, the Norris-LaGuardia Act totally ousts the District Court of jurisdiction, there would be no practical reason why the respondents should not have continued their picketing at all public crossing entrances to the terminal in order to make the petitioners suffer until they were willing to embargo the FEC.

But more important, of course, is the fact—which the quoted passage and the others we have referred to seem to reflect—that it appears that the real contention of respondents here is not, as they have always contended, that the District Court had no jurisdiction, but rather that their grievance appears to be essentially with the breadth of its

order.—If, as seems to be the case, the real grievance of respondents is the breadth of the District Court's order, we must point out that this complaint is being made for the first time in this Court. What is before this Court for adjudication is, essentially, the question of the District Court's jurisdiction. It is only a preliminary injunction that is before this Court, and the scope of appellate review, jurisdictional questions apart, of such an injunction is limited, as we have indicated in our opening brief. (Pet. Br. 50) If the respondents have a quarrel with the breadth of the order—whether, for example, it should have added to it certain conditions to assure that the FEC employees in fact use the reserved gate, a detail to which respondents now draw considerable attention (Resp. Br. 35-36)—it is not to be assumed that the District Court will neglect to consider those matters in its final hearing on a permanent injunction should the respondents bring them forward in the District Court. But those details have never been urged before, and hardly should be considered in the first instance by this Court on its review of the District Court's jurisdiction and of the question whether it abused its discretion in issuing a preliminary injunction.

We hasten to add, of course, that we do not take the position that it would be appropriate to permit picketing at any of the public crossings or other locations, apart from the reserved gate, where the respondents threw up their picket line. At all of those locations, even where some of the crossing movements involve interchange with the FEC, there are substantial amounts of movements which have nothing at all to do with the FEC—either through movements on a single carrier's line, or interchanges between carriers other than the FEC. Furthermore, we disagree with the

---

[1] And, of course, approximately 70% of the freight interchanges at the terminal do not involve the FEC at all. (R. 11)

premise that respondents may picket even those movements of the petitioners which are destined for interchange with FEC or which consist of cars which have come from FEC. The authorities cited by respondents under the provisions of Section 8(b)(4) of the LMRA—the force of which as a statutory analogy both sides of this case now seem to recognize—do not go this far.* In delivering cars for interchange to the FEC or picking them up from the FEC, petitioners are doing their own work as interstate carriers and are not doing the FEC's work; indeed they are not voluntary "allies" but simply carriers doing their duty under the Interstate Commerce Act. Despite the emotional appellation of the respondents (Res. Br. 67), none of the work done by Terminal Company employees or by the Seaboard's or the Coast Line's employees in the terminal area is "struck work" or work which was previously done by the FEC, as we developed at pages 37-39 of our opening brief.—The point is, rather, that the approach of respondents in their own brief is the plainest sort of indication that there is something fundamentally wrong with their essential legal theory, which is that the Norris-LaGuardia Act gives them

---

* The principal authority cited is *United Steelworkers* v. *NLRB*, 376 U.S. 492 (1964), which held that picketing at an adjacent spur where cars were delivered to a struck industrial concern was not proscribed by § 8(b)(4). But here, the terminal is not immediately adjacent to the FEC's own premises; and to refer to the "delivery" of the rail cars for interchange with the FEC as equivalent to the "delivery" of goods to a struck industry (Res. Br. 66) is to indulge in a play on words. In the case of picketing an industrial delivery site, the only stoppage is of movements to and from the struck employer, who is the consignee or shipper. But even if there were some way in which only the interchange operations of petitioners with the FEC could be picketed, the picketing then would be an effort to stop the through movement for the account of petitioners' innocent customers—the shippers and consignees on petitioners' lines who ship or receive freight on through routes in part over the FEC's lines—who, like petitioners, are not parties to the respondents' troubles with the FEC.

carte blanche to escalate their dispute against the FEC by shutting down the Jacksonville Terminal.[9]

2. The respondents give emphasis in their brief to a contention that the District Court lacked jurisdiction because the conduct enjoined is arguably subject to the exclusive primary jurisdiction of the NLRB under the LMRA. While we discuss this contention to the extent its merits intrinsically require in a footnote to our opening brief (p. 53, n. 2), perhaps some further discussion is warranted in view of the emphasis given it by respondents.

The definitional section of the LMRA is plain on its face in exempting controversies entirely within the railroad industry, as this one is, from the coverage of the LMRA and the jurisdiction of the NLRB. Section 2 of the LMRA provides in pertinent part:

> "(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include . . . any person subject to the Railway Labor Act, as amended from time to time. . . .

---

[9] While respondents spend 20 pages (Res. Br. 27-47) in an effort to establish that in and of itself the Norris-LaGuardia Act, read apart from the Railway Labor Act, is applicable to secondary conduct of the sort involved here, the only conclusion one can be left with from a reading of this lengthy exercise is that indeed, as we pointed out in our opening brief (p. 42), and as the Court of Appeals observed (R. 45-46), there is no authoritative holding of this Court to the effect that, even apart from the Railway Labor Act, the Norris-LaGuardia Act forbids the grant of an injunction against the sort of conduct involved here.

Respondents cite the Clayton Act at considerable length in their discussion of the law. (Res. Br. 1-3, 34-38, 62-63) But §§ 6 and 20 of that Act, relied on by respondents, are *in pari materia* with the Norris-LaGuardia Act, see *United States* v. *Hutcheson*, 312 U.S. 219, 235-36 (1941), and must like it be accommodated to the later provisions of the Railway Labor Act.

"(3) The term 'employee' shall include any employee . . . but shall not include . . . any individual employed by an employer subject to the Railway Labor Act, as amended from time to time. . . ." 29 U.S.C. §§ 152(2), (3).

"Labor organizations" are subject to the Act only if "employees" within the foregoing definitions participate in them:

"(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 29 U.S.C. § 152(5).

There is no dispute that all the *dramatis personae* in the events which led up to this lawsuit—the FEC, its employees, the Coast Line, the Seaboard, the Terminal Company, their employees, and the respondents—are persons subject to the Railway Labor Act. It would make a mockery of the elaborate scheme for dealing with labor controversies in the railroad industry to suggest that Congress also superimposed on it the jurisdiction of the NLRB. The authors of the LMRA made it plain that they had no such purpose:

"The exemption of employees of employers subject to the Railway Labor Act is to make it perfectly clear that in providing remedies for unfair labor practices of unions and their agents [in the LMRA] it was not intended to include such employees." S. Rep. No. 105, 80th Cong., 1st Sess. (1947), p. 19.

As this Court has pointedly said:

> "The Act, in its definition of an 'employer', expressly excludes anyone subject to the Railway Labor Act. 61 Stat. 137, 29 U.S.C. § 152(2). It is of course true that employer-employee relationships of railroads such as respondent are governed by the Railway Labor Act, which was passed before either the National Labor Relations Act or the Labor Management Relations Act. Neither of the latter Acts was intended to tread upon the ground covered by the Railway Labor Act. It is clear that neither railroads nor their employees may carry their grievances with one another to the N.L.R.B. for resolution. . . ."
>
> "We think it clear that Congress, in excluding 'any person subject to the Railway Labor Act' from the statutory definition of 'employer,' carved out of the Labor Management Relations Act the railroads' employer-employee relationships which were, and are, governed by the Railway Labor Act." *Local Union No. 25* v. *New York, N.H.&H.R.Co.*, 350 U.S. 155, 159-60 (1956).[10]

The only authority cited by respondents to the effect that they are "arguably" subject to the LMRA is *International Brotherhood of Electrical Workers* v. *NLRB*, 350 F.2d 791 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 943 (1966). But the only basis on which certain railroad brotherhoods were there held liable to an order of the NLRB was that they had acted as agents for certain unions subject to the LMRA. As the Court of Appeals there framed the ques-

[10] The 1959 amendments to § 8(b)(4) of the Act extended that section to make it apply where railroads were the victims of secondary conduct, but only by a nonrail union or its agents. See § 704, Pub. L. 86-257, 73 Stat. 542; *United Steelworkers* v. *NLRB*, 376 U.S. 492 (1964).

tion: "The only significant question presented is whether . . . two of the petitioners [the rail brotherhoods] can be held liable as 'agents' of 'labor organizations' for actions which would violate the express provisions of Section 8(b)(4)(i)(ii)(B) of the National Labor Relations Act if committed by 'a labor organization or its agents'." 350 F.2d, at 792. We have yet to hear the name of any nonrail union for whom respondents are "arguably" acting as agents in this case. In point of fact, there is none, and the entire reliance upon the *Electrical Workers* case is ill-founded.

It is worthwhile to remember just what this controversy is, and indeed who the respondent brotherhoods are. This is an all-rail controversy; common carriers by rail and three of the major operating railroad brotherhoods—organizations unquestionably subject to the Railway Labor Act—and the carriers' employees and the brotherhoods' rail-worker members are the actors. We do not have presented any severable, nonrailroading aspect of the carriers' business about which the controversy centers. *Cf. Pan American World Airways, Inc.* v. *United Brotherhood of Carpenters and Joiners*, 324 F.2d 217 (9th Cir. 1963).[11] If the sort of controversy involved in this case is "arguably" subject to the NLRB, every labor contro-

[11] The work involved in the *Pan American* case, cited by respondents (Res. Br. 60), involved a government contract for housekeeping and general support services, awarded to Pan American by the Atomic Energy Commission, to be performed at the AEC's Nevada test site at Jackass Flats, Nevada, a point not located on Pan American's air routes. "Pan American's work was the preventive maintenance of electrical, electronic and ventilation equipment and such technical functions as the storage and use of liquids, fuels and gases. The work is in connection with the development of a nuclear rocket engine to be used for the propulsion of space vehicles." 342 F.2d, at 220. —Obviously, this work had nothing at all to do with Pan American's airline transportation business. By contrast, the activities involved in this case are obviously railroading activities.

versy in the railroad industry would be, at least until the NLRB specifically disclaimed jurisdiction in each case; and as a practical matter the independent regime which Congress meant to preserve for railway labor matters would be at an end. Respondents have not suggested any stopping place if this matter is "arguably" subject to the NLRB.

The claim of exclusive primary jurisdiction in the NLRB concerning this matter is thus frivolous. No one has ever contended that this matter is actually within NLRB jurisdiction. The respondents once again disclaim that it is (Res. Br. 61, n. 33) and make it patent that their purpose in raising the issue is, as we have previously indicated (Pet. Br. 53-54, n. 2), simply part of their overall plan to take the position that there is no jurisdiction anywhere—whether in a federal or a state court, or in an administrative agency—to enjoin their attempt to escalate their dispute with the FEC into a rail tie-up of the Terminal Company, of the systems of the Coast Line and the Seaboard, and of rail access into the whole of peninsular Florida.

CONCLUSION

For the reasons stated in our opening brief and herein, the judgment of the Court of Appeals should be reversed, and the order of the District Court granting the limited preliminary injunction should be affirmed.

Respectfully submitted,

PAUL A. PORTER
ABE KRASH
DENNIS G. LYONS
DANIEL A. REZNECK
1229 Nineteenth Street, N.W.
Washington, D. C. 20036

Attorneys for Petitioners

Of Counsel:

PRIME F. OSBORN, III
C. D. TOWERS, JR.
DAVID M. FOSTER
W. E. GRISSETT, JR.
ADAM G. ADAMS, II
ROGERS, TOWERS, BAILEY, JONES & GAY
COX, GRISSETT & WEBB
McCARTHY, ADAMS & FOOTE
Jacksonville, Florida

CHARLES R. HALPERN
ARNOLD & PORTER
Washington, D. C.

October, 1966

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

ATLANTIC COAST LINE R. CO. ET AL. *v.* BROTHERHOOD OF RAILWAY TRAINMEN ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 220. Decided October 24, 1966.

PER CURIAM.

The judgment is affirmed by an equally divided Court.

MR. JUSTICE FORTAS took no part in the consideration or decision of this case.

END OF CASE